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A
DIGESTED ABRIDGMENT,
AND
COMPARATIVE VIEW,

OF THE
Statute Law
OF
ENGLAND AND IRELAND,

TO THE YEAR 1811, INCLUSIVE ;

ANALYTICALLY ARRANGED IN THE ORDER OF

SIR W. BLACKSTONE'S COMMENTARIES:

WITH A
CHRONOLOGICAL TABLE OF THE STATUTES,

AND AN
INDEX TO THE WORK.

BY JOSEPH GABBETT, ESQ.

BARRISTER AT LAW.

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DIGESTED ABSTRACT

COMPARATIVE VIEW

Statute Law

ENGLAND AND IRELAND

TO THE YEAR 1811, INCLUSIVE

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VOL. II. PART I.

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CHAP. I.

Of the Redress of Private Wrongs

BY THE

MERE ACT OF THE PARTIES.

THE statutes which respect the remedies for the re- Book III.
dress of civil injuries or private wrongs, are next in
order; and obviously follow those which have been
stated in the two preceding parts of this digest, which
were conversant about the rights of persons in their
various characters, capacities, and relations.

As to the remedy of *distress* considered with relation § 1.
to the things which may be distrained: It is a provision *Beasts of the
plough, &c.
exempted from
distress.*
of the 51. Hen. 3. st. 4 E. & I. that no man of religion,
nor other, shall be distrained by his beasts that gain his
land, nor by his sheep, for the king's debt, nor the debt
of any other man, nor other cause, but until they can find
another distress sufficient; except impounding of beasts
that a man findeth in his ground *damage feasant*. And the
28. Edw. 1. st. 3. c. 12. E. & I. also exempts beasts of 28 Edw. 1. st. 3.
the plough from distress for the king's debt, so long as c. 12 E. & I.
a man may find another. By the 2 W. & M. st. 1. c. 5. 2 W. & M. st. 1.
s. 3. Eng. every person having rent arrear upon any de- c. 5. s. 3. Eng.
mise, lease or contract, may seize and secure any sheaves 7 W. 3. c. 22.
or cocks of corn, or corn loose or in the straw, or hay & s. 5. Ir.
lying or being in any barn or granary, or upon any hovel, *Corn in sheaves,
&c may be
distrained.*
stack or rick, or otherwise upon any part of the land or
ground charged with such rent; and lock up or detain
the same in the place where it shall be found, until it
VOL. II. B shall

shall be replevied (as by s. 2. *post*) [*and in default of so replevying, may sell the same after appraisement] so as it be not removed to the damage of the owner, but kept where it shall be found till it be replevied or sold. The 7 W. 3. c. 22. Ir. contains similar clauses, (s. 4 & 5.) with such variation only as is noted in the margin. The 11

11 Geo. 2. c. 19.
s. 8. Eng.

*Corn &c. grow-
ing may be also
distrained.*

s. 9.

Proviso.

Geo. 2. c. 19. s. 8. Eng. further provides, that every lessor or landlord, or his steward, bailiff, or other empowered by him, may take as a distress for rent, all sorts of corn and grass, hops, roots, fruits, pulse, or other product, growing on any part of the estate so holden; and cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other place on the premises; and in case there shall be no barn or proper place on the premises, then in any other barn, &c. which such lessor, &c. shall procure for the purpose, as near as may be to the premises; and in convenient time, appraise, sell, or otherwise dispose of the same, as other goods may be distrained and disposed of; the appraisement thereof to be taken when cut, &c. and not before. Provided (s. 9.) that notice of the place where the goods so distrained shall be deposited, shall, within a week after the lodging thereof, be given to such lessee or tenant, or left at the last place of his abode; and if before such distress shall be ripe and cut, cured or gathered, the tenant, his executors, &c. shall pay the rent in arrear, with the costs of such distress, then upon such payment, or lawful tender thereof, such distress shall cease, and the corn, &c. so distrained shall be delivered up. The tenantry acts of Ireland do not contain any provisions similar to those of the 11 Geo. 2. c. 19. s. 8 & 9. Eng.

*Rents-seck, &c.
may be distrain-
ed for.*

4 Geo. 2. c. 28.
s. 5. Eng.
11 Ann. c. 2.
s. 7. Ir.

With respect to the several kinds of rent for which the remedy of distress may be resorted to: the 4 Geo 2. c. 28. s. 5. Eng. provides, that every person, &c. shall have the like remedy by distress, and by impounding and selling the same, in cases of rents-seck, rents

* Instead of the words within the crotche's, the 7 W. 3. c. 12. s. 4. Ir. provides, that in case such distress shall not be replevied or owned within eight days next after the taking thereof, then the same to be appraised and sold according to law.

rents of assize, and chief rents, as in case of rent reserved upon lease: which is also the provision of the 11 Ann, c. 2. s. 7. Ir.

Next as to the disposal of the distress: It is enacted by the 52 Hen. 3. c. 4. E. & I. (which was confirmed by the 3 Edw. 1. c. 16. E. & I.) that none shall cause any distress to be driven out of the county; and that if any neighbour shall do so to another, of his own authority, and without judgment, he shall be punished by redemption; but if the lord so do against his tenant, he shall be grievously punished by amercement. And by the 1 & 2 Ph. & M. c. 12. s. 1. Eng. no distress of cattle shall be driven out of the hundred, [*rape, wapentake or lath] where such distresses shall be taken, except to a pound overt within the shire, not above 3 miles distant from the place where the distress is taken. And no goods distrained for any cause at one time, shall be impounded in several places, whereby the owner shall be constrained to sue several replevins; upon pain that every person offending shall forfeit to the party grieved 100s. and treble damages. And by s. 2. no person shall take in pound or poundage of any distress above 4*d.*; and where less hath been used there to take less; upon pain of £5. to be paid to the party grieved, besides such money as he shall take above 4*d.* The 10 Car. 1. st. 2. c. 25. Ir. contains corresponding provisions. By the 2 W. & M. st. 1. c. 5. s. 2. Eng. where goods shall be distrained for rent due upon any lease or contract, and the tenant or owner of the goods shall not within 5 days after such distress, and notice thereof, with the cause of such taking, left at the mansion-house or other most notorious place of the premises charged with the rent, replevy the same; the person distraining may, with the sheriff or under sheriff of the county, or with the constable of the hundred, parish, or place, where the distress shall be taken, cause the distress to be appraised by 2 sworn appraisers, whom such sheriffs, &c. shall swear to appraise them truly; and after such appraisement may sell the same towards satisfaction of the rent, and the charges of the distress, &c. leaving the overplus, if any, in the hands

Distress not to be driven out of the county.

52 Hen. 3. c. 4. E. & I.

3 Edw. 1. c. 16. E. & I.

1 & 2 Ph. & M. c. 12. s. 1. Eng.

Distance of pound.

s. 2.

Foundage limited.

10 Car. 1. st. 2. c. 25. Ir.

2 W. & M. st. 1. c. 5. s. 2. Eng.

Appraisement of distress.

hands of the sheriff, &c. for the owners use. By the
 18 Edw. 4. c. 1. Ir. as explained by the 10 & 11 Car. 1.
 Ir. c. 7. s. 2. Ir. the appraisement of distresses made by any
 10 & 11 Car. 1. c. 7. s. 2. Ir. tenant in fee, or of any estate of freehold, or for
 years, or guardian in socage, or tenant by *elegit*, statute-
 merchant, or statute staple, is directed to be within 8
 days after the taking, by 4 or more honest and discreet
 persons of the parish (as was used to be done by 4 per-
 sons of the lordship, between very lord and very tenant);
 the oath to be administered by the parties distraining, or
 by their seneschals, bailiff or receiver. And if he from
 whom it is taken do not come in within 8 days after the
 presentment, and pay or make agreement for his duty,
 the distress may be taken, as it is appraised, for the
 rent and damages; if the distress be above the rent, the
 surplus to be restored; if deficient, the tenant to be dis-
 8 Geo. 1. c. 2. s. 6. Ir. trained again. But the 8 Geo. 1. c. 2. s. 6. Ir. provides,
 that it shall be lawful to appraise any goods that shall be
 taken by way of distress for rent, duties, or services,
 which by law are liable to be appraised, by 3 or more
 honest and discreet persons of the barony where such
 distress shall be taken; and that the landlord, his steward,
 bailiff, agent or receiver, may and shall administer an
 oath to such persons, that they will according to the
 best of their judgment, skill, and knowledge, justly and
 indifferently value and appraise the same; which ap-
 praisement shall be as effectual as if made in pursuance
 of any former law. And the 25 Geo. 2. c. 13. s. 5. Ir.
 25 Geo. 2. c. 13. s. 5. Ir. recites, that the manner in which rent-services, fee-
 farm rents, or rent charges, have been often disposed
 of, have occasioned troublesome suits; and enacts that
 all distresses lawfully taken for any such rent or arrears
 of rent shall, unless redeemed within 8 days after the
 same shall be distrained, be sold by public cant to the
 highest and fairest bidder, at such time or times, and at
 such convenient place or places, as the person distrain-
 ing, his agent or bailiff, shall appoint; such person, &c.
 after default made in redeeming such distress within the
 time aforesaid, first causing notice in writing of the
 place

*Distress if not
 redeemed in 8
 days, sold after
 6 days notice.*

place and time to be posted up 6 days previous to such sale, in the next market town to such place, at the usual place in such market town for posting up public notices: And the price for which such distress shall be, *bona fide*, then and there sold, shall be deemed, between such parties, and all deriving under them, the full value; and such value shall not be afterwards questioned in any court of law or equity; and in case such distress shall be sold for more than is due, the overplus, after deducting all necessary expenses attending the taking and selling such distress, shall be paid over to the person from whom such distress shall be taken.

By the 11 Geo. 2. c. 19. s. 8. Eng. every lessor or landlord, his steward, &c. may take as a distress for rent, any cattle or stock of their tenants depasturing upon any common, appendant or appurtenant, or belonging to all or any part of the premises demised. And by s. 10. any person taking any distress for rent may impound or secure the distress on such place or part of the premises, chargeable with the rent, as shall be most convenient, and appraise, sell, and dispose of the same, upon the premises, as any person may do off the premises [* by virtue of the 2 W. & M. st. 1. c. 5. Eng.]; and it shall be lawful for any person to come and go to and from such part of the premises to view, appraise, and buy; and also to carry off the same on account of the purchaser; and if any pound-breach or rescue be made of goods distrained for rent secured by virtue of this act, the person aggrieved shall have like remedy as in cases of pound-breach or rescue [by the 2 W. & M. st. 1. c. 5. Eng. *post.*] The 15 Geo. 2. c. 8. Ir. contains similar clauses (s. 5 & 6.) with such variation only as is noted in the margin.

Distress may be upon common appendant, &c.

11 Geo. 2. c. 19. s. 8. Eng.

s. 10.

Distress may be appraised, &c. on the premises.

* These words not in the 15 Geo. 2. c. 8. Ir.

15 Geo. 2. c. 8. s. 5 & 6. Ir.

By the 2 W. & M. st. 1. c. 5. s. 4. Eng. upon any pound-breach or rescue of goods distrained for rent, the person grieved shall, in a special action upon the case, recover treble damages and costs against the offender, or against the owner of the goods if they come to his use. The 7 W. 3. c. 22. Ir. contains a similar provision

Penalty for pound-breach or rescue.

2 W. & M. st. 1. c. 5. s. 4. Eng. 7 W. 3. c. 22. s. 6. Ir.

4 Geo. 1. c. 5. Ir. vision. And by the 4 Geo. 1. c. 5. Ir. where any distress shall be taken by landlord or lessor, or by any person authorized; if such distress, or any part thereof, be rescued, every person so rescuing being convicted thereof shall be committed in execution by the court before whom such conviction shall be, for such fine as the court shall think reasonable; and in case the party shall not pay such fine to the sheriff of the county, within one month after such commitment, he shall be conveyed by the sheriff to the house of correction, or some workhouse in said county, and kept at hard labour for any time not less than 3 months, nor exceeding 6 months, according to the discretion of the judges or justices, &c.

8 Geo. 1. c. 2. s. 8. Ir.

Jurisdiction of justices of peace in cases of rescue.

s. 9:

s. 10.

And the 8 Geo. 1. c. 2. s. 8. Ir. further provides, that if any distress lawfully taken for rent, or services, or other legal dues, be rescued; if the person on whose behalf such distress was taken, or any person employed in taking such distress, shall, within 14 days after such rescue, make oath thereof before a justice of peace of the county where such rescue shall have been committed, such justice shall by warrant order one constable, or more, to assist to distrain again for said rents, &c. and to take with him a number of persons sufficient to secure and convey the distress to some lawful pound. Provided (s. 9.) that before any justice shall grant such warrant, there shall be deposited in his hand a reasonable sum to satisfy such constable, and his assistants, for their trouble in executing such warrant, after the service performed; which money so paid shall in the first place be deducted out of the money arising by the sale of such distress, in case the same shall be sold; or otherwise be levied by distress and sale, as in case of a distress for rent; or by civil bill against the person owing the rent, &c.; with costs of suit. And by s. 10. if it shall appear upon oath to any justice of peace of the county or place where any hay or corn shall be lawfully distrained, that the same is in great danger of being rescued, or unlawfully taken away, such justice shall by warrant order any constable of the same county to appoint a sufficient number of fit persons to watch and secure such corn, &c. until the same

might

might be sold, or delivered by law; and each person so appointed shall be paid such wages as such justice shall direct, not exceeding 1s. nor less than 6d. for one days attendance; nor less than 1s. nor more than 1s. 6d. for a day and a nights attendance, to any one person: Provided, that the person, at whose instance such warrant shall be granted, shall, before the granting of the same, deposit a sum in the hand of said justice sufficient for such payment, which payment such justice shall accordingly make as aforesaid; and one moiety thereof shall be at the charge of the party, on whose behalf such warrant was granted; and as to the other moiety satisfaction shall be made to the party who made the deposit, out of the money arising by the sale of such distress, in the first place, in case the same shall be sold; or otherwise by distress and sale, as in cases of distress for rent; or by civil bill against the person owing the rent, &c.; with costs of suit.

By the 11 Geo. 2. c. 19. s. 1. Eng. (which amends the 8 Ann. c. 14. s. 2 & 5. Eng.) in case any tenant, lessee for life or lives, term of years, at will, sufferance* or otherwise, of any lands, &c. upon the demise or holding whereof any rent is reserved, shall fraudulently or clandestinely convey away from such premises his goods, to prevent the landlord or lessor† from distraining the same for arrears of such rent, such landlord, &c. or any person by him lawfully empowered, may, within ‡“30 days” next ensuing such conveying away, take such goods, wherever the same shall be found, as a distress for said rent; and sell or dispose of the same as if distrained upon such premises, and in such manner as by the 2 W & M. st. 1. c. 5. Eng. (*ante* page 3) Provided (s. 2.) that such goods shall not have been sold, *bona fide*, for a valuable consideration, before such seizure made, to any person not privy to such fraud. And by s. 3. if any such tenant shall

Distress if fraudulently conveyed away may be taken any where.

8 Ann, c. 14. s. 2. 3. & 5. Eng.

11 Geo. 2. c. 19. s. 1. 2. & 3. Eng.

s. 2.

Proviso.

s 3.

* “Or any person paying any rent charge, or fee-farmer,” is added in 15 Geo. 2. c. 8. Ir.

† Grantee of rent charge, or grantor of fee-farm” added in 15 Geo. 2. c. 8. Ir.

‡ “Twenty days” by the 15 Geo. 2. c. 8. s. 1. Ir.

*Penalty for
fraudulently re-
moving distress.*

*"Dublin" in
15 Geo. 2. c. 8.
Ir.*

*11 Geo. 2. c. 19.
s. 4. Eng.*

*Jurisdiction of
justices of peace
in respect there-
to.*

s. 5.

s. 6.

15 Geo. 2. c. 8.

s. 1. 2 & 3, Ir.

shall fraudulently remove his goods, or wilfully and knowingly aid or assist such tenant, &c. in such fraudulent conveying away any part of his goods, or in concealing the same, such person shall forfeit to the landlord or lessor double the value of the goods so carried off or concealed, to be recovered by action of debt, in any court of record at [*Westminster, or in the courts of sessions in the counties palatine, or grand sessions in Wales], wherein &c. But the 11 Geo. 2. c. 19. Eng. further provides (s. 4.) that where the goods so carried off, &c. shall not exceed the value of £50. the landlord or lessor, his bailiff, servant, or agent, may exhibit a complaint in writing against such offender before 2 or more justices, of the same county or riding, residing near the place where such goods were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties, examine the fact, and all proper witnesses upon oath or affirmation, and in a summary way determine whether such person be guilty of the offence; and inquire in like manner of the value of such goods; and upon proof of the offence, by order under their hands and seals, shall adjudge the offender to pay double the value of such goods to such landlord, his bailiff, &c. at such time as said justices shall appoint: And in case the offender, having notice of such order, shall refuse or neglect so to do, shall levy the same by distress, &c.; and for want of such distress, may commit the offender to the house of correction, there to be kept to hard labour for 6 months, unless the money so ordered shall be sooner satisfied. But by s. 5. any person aggrieved may appeal to the next general or quarter sessions, who shall determine such appeal, and give costs to either party; whose determination shall be final. And by s. 6. where the party appealing shall enter into a recognizance with surety in double the sum ordered, with condition to appear at such general or quarter sessions, the order of the justices shall not be executed in the mean time. The 15 Geo. 2. c. 8. Ir. contains clauses (s. 1. 2 & 3) corresponding to the 11 Geo.

11 Geo. 2. c. 19. s. 1. 2 & 3. *supra*; and by s. 4. also provides, that where the goods so fraudulently carried off or concealed shall not exceed the value of £20. the grantee of such rent charge, grantor of fee-farm, landlord or lessor, or his bailiff, servant or agent, may exhibit a complaint by civil bill, and upon proof of the offence, and of the value of the goods, the offender shall be decreed to pay double the value of the goods to such grantee of the rent charge, &c. with like execution and remedy by appeal as in other cases of civil bill. But the 11 Geo. 2. c. 19. s. 7. Eng. further provides, that where any goods fraudulently carried away by any tenant, his servant or agent, or other person assisting, shall be put in any house or place locked up or secured, so as to prevent such goods from being seized for rent, it shall be lawful for the landlord, his steward, bailiff, receiver, or other person empowered by him, to seize for rent such goods, first calling to his assistance the constable, or other peace officer of the place where the same shall be suspected to be concealed, who are required to assist; and in case of a dwelling house (oath being also made before some justice of peace of a reasonable ground to suspect that such goods are there,) in the day time to break open and enter into such house or place, and seize such goods for the rent, as they might have done if such goods had been put in any open place. This clause has not been adopted or followed in the 15 Geo. 2. c. 8. Ir. nor by any other Irish Statute.

The 11 Geo. 2. c. 19. s. 19. Eng. recites, that it is a great hardship upon landlords and other persons distraining, that a distress duly made should be in effect avoided for any subsequent irregularity, by making the party distraining a trespasser *ab initio*; and therefore enacts, that where any distress shall be made for any rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or by his agents, the distress itself shall not be therefore deemed to be unlawful, nor the party a trespasser *ab initio*; but the party aggrieved shall receive full satisfaction for the special damage sustained thereby, and no more

Corresponding
and analogous
provisions.

11 Geo. 2. c. 19.
s. 7. Eng.

Houses &c. may
be broke open in
search of distress
fraudulently
taken away or
concealed.

Party distrain-
ing not a tres-
passer *ab initio*
by reason of
subsequent irre-
gularity.

11 Geo. 2. c. 19.
s. 19. Eng.

But action for
special damage.

s. 20.

No action for irregularity if tender of amends before action.

s. 21.

Pleading and costs in such actions.

15 Geo. 2. c. 8. s. 10. Ir.

Abuses of the remedy of distress restrained.

9 Hen. 3. c. 10. E. & I.

52 Hen. 3. c. 1. E. & I.

c. 2.

c. 3.

more, in an action of trespass, or on the case ; and where such plaintiff shall recover, he shall be paid his full costs. Provided (s. 20.) that no tenant shall recover for such irregularity, if tender of amends hath been made by the party distraining, or his agents, before action brought. And by s. 21. in actions of trespass, or upon the case, brought against persons entitled to rents or services, their bailiff or receiver, or other persons, relating to any entry upon the premises chargeable with such rents, &c. or to any distress or seizure, sale or disposal, of any goods thereupon, the defendant may plead the general issue ; and shall recover double costs of nonsuit, discontinuance, or judgment. The 15 Geo. 2. c. 8. s. 10. Ir. has followed this last clause (s. 21.) of the 11 Geo. 2. c. 19. Eng. ; but the other clauses (s. 19 & 20.) have not been adopted by this or any other Irish statute.

The abuses of the remedy of distress are restrained by the following ancient statutes. The 9 Hen. 3. c. 10. E. & I. provides, that none shall be distrained to do more service for any freehold than is due. And by the 52. Hen. 3. c. 1. E. & I. all persons shall receive justice in the king's court, and none shall take distress of his own authority without award of court, though he have injury : And if any take such distresses of his own authority, and be convict thereof, he shall be punished by redemption according to the trespass. And if one neighbour take distress of another without award of court, whereby he hath damage, he shall be punished after the quantity of the trespass ; and amends shall be made to them that have sustained loss by such distresses. By c. 2. none shall distrain any to come to his court which is not of his fee, or over whom he hath no jurisdiction by reason of his hundred or bailiwick ; nor shall take distresses without his fee, or in places where he hath no jurisdiction : And he that offendeth shall be punished in like manner according to the trespass. And by c. 3. if any will not suffer such distresses as he hath taken to be delivered by the king's officers, or will not suffer summons, attachments, or executions of judgments given in the king's courts to be done, he shall be punished in manner

manner aforesaid. And if any distrain his tenant for services and customs, or other thing, wherefore the lord of the fee hath cause to distrain, and after it is found that the services are not due, the lord shall not therefore be punished by redemption, as in the cases aforesaid, if he suffer the distresses to be delivered, but shall be amerced, and the tenant shall recover his damages. By c. 4. the distresses shall be reasonable and not too great; c. 4. and he that taketh great and unreasonable distresses shall be grievously amerced for the excess. And by this Distress to be reasonable; statute c. 15. (which is confirmed by the 3 Edw. 1. c. 16. c. 15. E. & I.) it shall be lawful for no man to take distresses 3 Edw. 1. c. 16. E. & I. out of his fee, nor in the high way, nor in the common street, but only to the king or his officers, having In proper place; special authority. By the 3 Edw. 1. c. 23. E. & I. in 3 Edw. 1. c. 23. E. & I. no city, borough, market or fair, shall any foreign person (that is of this realm) be distrained for debt For just cause; whereof he is not debtor or pledge; and whosoever doth it shall be grievously punished; and the distress shall be delivered by the bailiff of the place, or by the king's bailiffs, if need be. And by the 13 Edw. 1. st. 1. 13 Edw. 1. st. 1. c. 37. E. & I. c. 37. E. & I. no distress shall be taken but by bailiffs sworn and known. And if they take distress otherwise, and By bailiffs sworn. thereof be convict, if the parties grieved will purchase a writ of trespass, they shall be restored to their damages, and the other grievously punished. By the 2 W. & M. 2 W. & M. st. 1. c. 5. s. 5. Eng. st. 1. c. 5. s. 5. Eng. if any distress or sale shall be as by this act (s. 2 & 3. *ante page 3.*) is provided, where there Double damages and costs against wrongful distrainer. is no rent due, the owner of the goods, his executors, &c. may by action of trespass, or upon the case, recover double the value of the goods distrained, with costs.

II. The abusive taking, and distraining for *Heriots* is §. 2. restrained by the 10 & 11 Car. 1. c. 10. Ir. which enacts, Penalty for unlawfully distraining for heriots. that no person shall take or distrain any cattle, or other goods, upon pretence of a heriot, where no heriot is 10 & 11 Car. 1. c. 10. Ir. due, upon pain of forfeiting 40s. besides restoring to the party grieved the cattle, &c. so taken, and rendering treble damages in any suit to be brought in the king's courts by bill or plaint; one moiety of said forfeitures to the party grieved, or such other as shall sue for the same, and

s. 2.

and the other to the king. Provided (s. 2.) that this act shall not extend to any case where a heriot is agreed upon between lessor and lessee, and specially reserved by writing ; nor to very lord and very tenant where heriot-service or heriot-custom hath heretofore been accustomedly paid.

§. 3.

Differences determined by arbitration.

9 & 10. W. 3. c. 15. Eng.

III. With respect to remedies arising from the joint act of all the parties together : By the 9 & 10 W. 3. c. 15.

Eng. all merchants, and others, desiring to end any controversy (for which there is no remedy but by personal action or suit in equity) by *arbitration*, may agree that their submission of the suit to the award or umpirage of any persons shall be made a rule of any court of record, and may insert such their agreement in their submission, or the condition of the bond or promise ; and upon producing an affidavit of such agreement made by one of the witnesses thereto, and reading and filing such affidavit in court, the same may be entered of record, and a rule shall be thereupon made, that the parties shall submit to, and finally be concluded by such arbitration or umpirage ; and in cases of disobedience thereto, the parties shall be subject to all the penalties of contemning a rule of court, and process shall issue accordingly ; which shall not be stopped by any order or process of any other court of law or equity, unless it shall be made appear on oath to such court that the arbitrators or umpire misbehaved themselves, and that such award, &c. was procured by corruption, or other undue means. And by s. 2. any arbitration or umpirage procured by corruption or undue means shall be void, and be set aside by any court of law or equity ; so as complaint of such corruption, &c. be made in the court where the rule is made for such arbitration, &c. before the last day of the next term after such arbitration, &c. made and published by the parties. The 10 W. 3. c. 14. Ir. is the corresponding statute in Ireland.

s. 2.

10 W. 3. c. 14. Ir.

CHAP.

CHAP. II.

Of Courts in General.

TO this head of courts in general are to be referred the statutes respecting the appointment of attornies. *Appointment of attornies authorized.*
 By the 20 Hen. 3. c. 10. E. & I. every freeman owing 20 Hen. 3. c. 10. E. & I.
 suit to the county, tithing, hundred, and wapentake, or to a court baron, was allowed to make an attorney to do suit for him. And by the 6 Edw. 1. c. 10. E. & I. it 6 Edw. 1. c. 10. E. & I.
 was agreed that the defendants in pleas of trespass for goods worth 40s, and touching wounds and maims, might make their attornies. But the 13 Edw. 1. st. 1. c. 10. 13 Edw. 1. st. 1. c. 10. E. & I.
 E. & I. is the first statute which authorized the appointment of attornies in all pleas during the circuit of the justices.
 By the 12 Edw. 2. c. 1. E. & I. the tenants in writs of 12 Edw. 2. c. 1. E. & I.
novel disseisin were allowed to make attornies. And by the 7 Ric. 2. c. 14. E. & I. they who shall depart the 7 Ric. 2. c. 14. E. & I.
 realm with the king's license, being of good fame, may, before their departure, have a patent from the chancellor, (with the advice of the justices) enabling them to make general attornies to answer for them in writs of *præmunire facias*, and all other writs and plaints; in which patent particular mention shall be made of writs and plaints of *præmunire facias*; and those attornies may make attornies under them. And by the 7 Hen. 4. c. 13. E. & I. 7 Hen. 4. c. 13. E. & I.
 impotent persons that are outlawed may make their attornies by permission of any justice, or of the chief baron: howbeit, in the writ of *capias ad satisfaciendum* the common law shall hold place. It was a provision of the 15 Edw. 2. 15 Edw. 2. st. 1. E. & I.
 st. 1. E. & I. that the barons of the exchequer and justices should not admit attornies but in pleas that pass before them, and where they be assigned; reserving to the *By whom appointed.*
 chancellor

chancellor his authority in admitting attornies, and to the
 4 Hen. 4. c. 19. chief justices. By the 4 Hen. 4. c. 19. E. & I. no offi-
 E. & I.

*Certain officers
 excluded.*

shall be an attorney in the same franchise. By the
 4 Hen. 4. c. 18. 4 Hen. 4. c. 18. E. & I. all attornies shall be examined
 E. & I.

*Examination
 and oath of at-
 tornies.*

by the justices, and by their discretion put into the roll.
 And those that are by them approved shall swear truly to
 serve in their offices, and to make no suit in a foreign
 county. And the other attornies shall be put out by the
 like discretion of the justices; and their masters shall
 have notice thereof. And as any die or cease, the jus-
 tices shall appoint others, being virtuous, learned, and
 sworn as aforesaid. And if any attorney be found noto-
 riously in fault, he shall forswear the court, and be never
 admitted into any other court. The treasurer and barons
 of the exchequer shall pursue the like course there at
 their discretion. And by the 3 Jac. 1. c. 7. s. 2. Eng.
 none shall be admitted attornies in courts of record, but
 such as have been brought up in the same courts, or
 otherwise well practised in soliciting of causes, and found
 skilful, and of honest disposition.

3 Jac. 1. c. 7.
 s. 2. Eng.

*Their qualifica-
 tion.*

*Attornies not to
 practise until
 sworn, admitted,
 and inrolled.*

2 Geo. 2. c. 23.
 s. 1. Eng.

s. 2.

But to proceed to the modern statutes: The 2 Geo. 2.
 c. 23. s. 1. Eng. enacts, that no person shall act as an at-
 torney, or sue out any writ or process, or carry on or de-
 fend any action or other proceeding in the name of any
 person, in the king's bench, common pleas, or exche-
 quer, or duchy of Lancaster, or in the great sessions in
 Wales, or in any of the courts of the counties palatine,
 where attornies have been accustomedly admitted and
 sworn, unless such person shall take the oath herein ap-
 pointed, and also be admitted and inrolled in such of the
 said courts where he shall act in the manner herein di-
 rected. By s. 2. the judges of the said courts shall, before
 they admit such person to take the said oath, examine
 and inquire touching his capacity to act as an attorney;
 and if such judge shall be satisfied that such person is
 duly qualified, he shall administer in open court to such
 person the oath hereby directed, and shall cause him to
 be admitted an attorney in such court, and inrolled,
 without any fee, other than 1s. for administering the oath;
 which

which admission shall be written on parchment in English, ^{† The 6th Section is to the same effect as the 2d.} in a common legible hand, and signed by the judge, whereon the lawful stamp shall be first impressed, and shall be delivered to the person admitted.† And by s. 5. ^{s. 5.} no person shall act as an attorney, &c. unless such person shall have been bound by contract in writing, to serve as ^{Apprenticeship of 5 years necessary for attornies.} clerk for 5 years to an attorney duly sworn and admitted in some of said courts; and during said 5 years have continued in such service; and also unless such person, after the expiration of the 5 years, shall be examined, sworn, admitted, and inrolled, in the manner herein required. By s. 13. ^{s. 13.} every person who shall be admitted an attorney in said courts, shall, before he is admitted, take and subscribe the oath following:* “ I, *A. B.* do swear, that I ^{Oath to be taken by attornies.} “ will truly and honestly demean myself in the practice “ of an attorney, according to the best of my knowledge “ and ability. So help me God.” And by s. 3. ^{s. 3.} no person shall act as a solicitor, or sue out any writ or process, or solicit or defend any suit or proceeding in the name of ^{Solicitors to be also sworn, &c.} any other person, in any court of equity, either in chancery or in the exchequer chamber, or duchy chamber of Lancaster at Westminster, or courts of the counties palatine, or in any other inferior court of equity in England, unless he take the oath hereby appointed to be taken by solicitors, and shall be admitted and inrolled in the said courts, where he shall act as a solicitor. By s. 4. ^{s. 4.} the master of the rolls, two of the masters in chancery, the barons of the exchequer, the chancellor of the duchy, ^{Solicitors to be examined before admitted, &c.} and the judges of the other courts of equity, shall, before they admit any person to take the oath, examine and inquire touching his capacity; and if the said master of the rolls, &c. or any one of them shall be satisfied that such person is duly qualified, then the said master of the rolls, &c. shall administer the oath to be taken by solicitors, and shall cause him to be admitted a solicitor in

* By the 12 Geo. 2. c. 13. s. 8. Eng. Quakers who have served a clerkship with an attorney or solicitor, and shall be qualified, shall, upon taking their solemn affirmation, instead of the oaths directed to be taken, be admitted and inrolled as attornies or solicitors.

such

* The 8th sect.
is to the same
effect as the
4th.

s. 7.

*Apprenticeships
of 5 years requi-
site for solicitors.*

s. 14.

Oath of solicitors.

s. 18.

*Attornies and
solicitors to be
inrolled in the
proper courts.*

s. 20.

such court of equity, and his name to be inrolled as such without any fee, other than 1s. for administering such oath; which admission shall be written on parchment in English, and in a common hand, and signed by the master of the rolls, &c. whereon a treble 40s. stamp shall be first impressed, and shall be delivered to the person admitted.* And by s. 7 no person shall act as a solicitor, &c. unless such person shall have been bound by contract in writing, to serve as a clerk for 5 years to a solicitor duly sworn and admitted in one of the said courts of equity, and during the said term shall have continued in such service; and also unless such person, after the expiration of the 5 years, shall have been examined, sworn, admitted, and inrolled, as herein before required. By s. 14. every solicitor shall, before he shall be admitted and inrolled, take and subscribe the oath following: "I, *A. B.* do swear, that I will truly and honestly demean myself in the practice of a solicitor, according to the best of my knowledge and ability." By s. 18. the chief clerk of the king's bench, the clerk of the warrants in the common pleas, the prothonotaries of the counties palatine, and of the great sessions in Wales, or their deputies, and such officers of the inferior courts of law as the judges of the said courts shall appoint, shall, without fee, inroll the name of every person who shall be admitted an attorney in the said courts, and the time when admitted, in an alphabetical order in rolls or books; and the senior clerk of the petty bag office in chancery, the king's remembrancer of the exchequer, the chief clerk of the court of the duchy chamber of Lancaster, the registers of the courts of equity in the counties palatine, and the great sessions of Wales, or their deputies, and such officers of the inferior courts of equity as the judges of those courts shall appoint, shall, without fee, inroll the name of every person admitted as a solicitor in the said courts, and the time when admitted, in alphabetical order; to which rolls, &c. all persons shall have access without fee. By s. 20. any person who shall be admitted an attorney in the king's bench, common pleas, exchequer, counties palatine, and great sessions in Wales, may be sworn,

sworn, admitted, and inrolled a solicitor in all or any of the said courts of equity without any fee for the oath, or any stamp on the parchments whereon such admission shall be written, if the master of the rolls, two masters of chancery, the barons of the exchequer, the chancellor of the duchy of Lancaster, and the judges of the other courts of equity, shall, upon examining such person, be satisfied that he is duly qualified. And by s. 21. any person who shall be admitted a solicitor in any of the said courts, of chancery, exchequer, duchy of Lancaster, counties palatine, and great sessions in Wales, may be sworn, admitted, and inrolled a solicitor, in all or any of the said other courts of equity, or in any inferior court of equity, without fee for the oath, or stamp on the parchment, in case the master of the rolls, &c. shall be satisfied that he is duly qualified. But it is provided (s. 10.) that any attorney in any of the said courts of law, or solicitor in any of the said courts of equity, with the consent of any attorney in any of the other courts, such consent being in writing signed by such attorney, and in the name of such attorney, may sue out process, &c. or prosecute or defend any action or proceeding in such court, notwithstanding such person is not sworn or admitted an attorney of such court. By the 6 Geo. 2. c. 27. s. 2. Eng. any person admitted an attorney in any of the courts of record at Westminster, shall be capable of being admitted to practise as an attorney in any inferior court of record, provided he be qualified according to the custom of such inferior court. And the 23 Geo. 2. c. 26. s. 15. Eng. further provides, that any person sworn, admitted, and inrolled a solicitor in any court of equity at Westminster, may be sworn, &c. an attorney of the court of king's bench or common pleas at Westminster, without any fee for the oath, or any stamp on the parchment whereon such admission shall be written, if the judges shall, upon examining such solicitor, be satisfied that he is duly qualified.

A sworn attorney may be admitted a solicitor.

s. 21.

A sworn solicitor in one court of equity may be admitted into any other court.

s. 10.

An attorney, &c. of one court may proceed in another court in the name of another attorney, and with his consent.

6 Geo. 2. c. 27. s. 2. Eng.

An attorney of superior courts may practise in inferior.

23 Geo. 2. c. 26. s. 15. Eng.

Solicitors may be admitted attorneys without fees.

The 2 Geo. 2. c. 23. provides (s. 11.) that nothing in this act shall extend to authorize any judge to admit any greater number of attornies, than by the ancient usage of such

Judges not to swear a greater number of attornies than formerly allowed.

2 Geo. 2. c. 23.
s. 11. Eng.

s. 26.

*To what clerks
this act doth not
extend.*

s. 27.

s. 28.

*Exception of so-
licitors of the
treasury, &c*

*Penalty for an
attorney's ad-
mitting another
to use his name.*

3 Jac. 1. c. 7.
Eng.

2 Geo. 2. c. 23.
s. 17. Eng.

22 Geo. 2. c. 46.
s. 11. Eng.

such court hath been allowed. And by s. 26. nothing in this act shall extend to the examination, swearing, admission, or inrolment of the six clerks of the court of chancery, or the sworn clerks in their offices, or the waiting clerks belonging to the said six clerks, or the cursitors of said court, or the clerks of the petty bag office, or the clerks of the king's coroner and attorney in the court of king's bench, or the filazers of said court, or the filazers of the court of common pleas, or the attornies of the court of the duchy chamber of Lancaster, or of the court of exchequer at Chester, or of the courts of the lord mayor and sheriffs of London: Nor by s. 27. to the examination, &c. of the attornies or clerks of the offices of king's remembrancer, treasurer's remembrancer, pipe, or office of pleas in the court of exchequer, at Westminster; but the said attornies and clerks shall be approved, sworn, admitted, and practise in said court of exchequer, or may practise in any other of the courts of record before mentioned, in the name and with the consent of some sworn attorney of such court, (such consent to be in writing, and signed by such attorney); and any person who shall be admitted an attorney or solicitor in any of said courts, may practise and solicit in the said offices, as heretofore. And by s. 28. nothing herein shall extend to the examination, &c. of solicitors of the treasury, customs, excise, post-office, salt or stamp duties, or of any other branch of his majesty's revenue, or of the solicitor of the city of London, or of the assistant to the council for the affairs of the admiralty and navy.

By the 3 Jac. 1. c. 7. Eng. an attorney shall not admit any other to follow a suit in his name, on pain that each of them shall forfeit £20 to the king and the party grieved; and to be recovered in any court of record by writ of debt, &c. and the attorney shall be excluded. And by the 2 Geo. 2. c. 23. s. 17. Eng. if any sworn attorney of any of the said courts of law shall knowingly permit any other person to prosecute or defend any action in his name, not being a sworn attorney or solicitor, the person convicted thereof shall be disabled to act as an attorney, and his admittance shall be void: And the 22 Geo. 2. c. 46. s. 11. Eng. further provides, that

that if any sworn attorney or solicitor shall act as agent for any person not qualified to act as an attorney or solicitor, or suffer his name to be made use of upon the account or for the profit of any unqualified person, or send any process to such unqualified person, thereby to enable him to appear or practise as an attorney or solicitor, knowing him not to be qualified, and complaint shall be made thereof in a summary way to the court from whence such process did issue, and proof made thereof upon oath to the satisfaction of the court, then such attorney, &c. so offending, shall be struck off the roll, and for ever after disabled from practising as an attorney, &c.; and upon such complaint and proof the said court may commit such unqualified person so practising to the prison of said court, for any time not exceeding one year.

By the 2 Geo. 2. c. 23. s. 24. Eng. if any person in his own name, or in the name of any other, shall sue out any

writ or process, or prosecute or defend any action, suit, or proceeding, in any court of law or equity, as an attorney or solicitor, for gain or reward, without being admitted and inrolled, he shall forfeit £50 to the use of the prosecutor; and be incapable to maintain or prosecute any suit in any court of law or equity for reward.

By s. 25. the penalties in this act may be recovered by action of debt, &c. in any of the courts of record at Westminister, or of the counties palatine, or of great sessions in Wales, for offences committed within the jurisdiction of such courts, or at the assizes, or at the quarter sessions where such offence shall be committed, by any person who shall sue within 12 months after the offence, with treble costs: And no such suit or information shall be removed before judgment, or stayed by *certiorari*, *habeas corpus*, or other writ. And by the

22 Geo. 2. c. 46. s. 12. Eng. no person shall act as a solicitor, attorney, or agent, or sue out any process at any

general or quarter sessions of the peace for any county or place within this kingdom, with respect to matters of a criminal or civil nature, unless he shall have been admitted an attorney of one of the courts of record at Westminister, and inrolled pursuant to the 2 Geo. 2. c. 23.

or

2 Geo. 2. c. 23.
s. 24. Eng.

Penalty for un-
qualified person
acting.

s. 25.

Penalties reco-
verable with tre-
ble costs.

22 Geo. 2. c. 46.
s. 12. Eng.

Penalty for un-
qualified person
acting at ses-
sions.

or by virtue of this act, or such other law as shall be then in being, and unless he shall continue so entered upon the roll, at the time of his acting in the capacity aforesaid; but every person who shall so act, not being admitted and inrolled as aforesaid, shall be subject to a penalty of £50 to be recovered by action of debt, &c. in any court of record at Westminster, by any person who shall sue for the same within 12 months after the offence committed, with treble costs; and if any attorney shall permit any person not being admitted and inrolled as aforesaid, to make use of his name in the courts of general or quarter sessions, such attorney shall be subject to a like penalty of £50 to be recovered in manner aforesaid.

s. 13.

Persons exempted.

s. 14.

No clerk of the peace or under-sheriff to act as attorney at sessions.

* *Vide vol. 1.*

p. 247.

12 Geo. 2. c. 13.

s. 7. Eng.

Penalty for unqualified person acting in county courts.

s. 9.

No attornies to commence suits, &c. if prisoners.

Penalty.

s. 10.

But by s. 13. nothing herein shall deprive the attornies of the duchy of Lancaster, or of the courts of great sessions in Wales, or of the counties palatine, from acting within their respective jurisdictions. By s. 14. no clerk of the peace nor under sheriff, nor their deputies, shall act as a solicitor, attorney, or agent, or sue out any process, at any general or quarter sessions of such county, upon pain of £50. to be recovered as aforesaid.* And by the 12 Geo. 2. c. 13. s. 7. Eng. in case any person shall commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the county court, in any county in England, who is not admitted an attorney or solicitor, such person shall forfeit £20 to be recovered with costs by any person who shall sue, within 12 months, in any court of record. And by s. 9. no attorney or solicitor who shall be a prisoner in any prison, or within the rules of any prison, shall, during his confinement, in his own name, or in the name of any other, sue out any writ or process, or commence or prosecute any suit in any courts of law or equity; and all proceedings in such suits shall be void; and such attorney, &c. so commencing any suit shall be struck off the roll, and be incapacitated from acting as an attorney &c.; and any attorney &c. permitting such attorney &c. to commence any suit in his name, shall be struck off the roll, and incapacitated from acting as an attorney or solicitor. But by s. 10. nothing in this act shall prevent any attorney or solicitor

so confined from carrying on any suit commenced before *Proviso.*
 his confinement. The 12 Geo. 1. c. 29. s. 4. Eng. pro- 12Geo. 1. c. 29.
 vides that if any person convicted of forgery, or perjury, s. 4. Eng.
 or subornation of perjury, or common barrettry, shall
 practise as an attorney or solicitor in any court of law
 or equity within England, the judge of such court shall
 upon complaint or information thereof examine the mat- *Persons con-*
 ter in a summary way in open court; and if it shall ap- *victed of forgery*
 pear that such person hath offended contrary to this act, *&c. practising as*
 such judge shall cause such offender to be transported *attornies, &c.*
 for 7 years, as felons are by law to be transported. *to be transported.*

With respect to the clerks or apprentices of attornies: *No attorney to*
 The 2 Geo. 2. c. 23. s. 15. Eng. provides, that no attor- *have more than*
 ney or solicitor shall have more than two clerks at the *2 clerks at one*
 same time bound by contract in writing. And by s. 16. *time.*
 the prothonotaries of the common pleas, and the secondary *2 Geo. 2. c. 23.*
 of the king's bench, and the prothonotaries of the respec- *s. 15. Eng.*
 tive courts of the counties palatine, and the great sessions *s. 16.*
 in Wales, may have 3 clerks at the same time; and such *Prothonotaries*
 clerks having served a clerkship to any of the said protho- *of C. B. to have*
 notaries, or secondary, for 5 years, may be examined, *3 clerks.*
 admitted, and inrolled attornies of any of the courts of **Vide s. 1. p. 14.*
 law aforesaid.* By the 22 Geo. 2. c. 46. s. 3. Eng. *22 Geo. 2. c. 46.*
 every person who shall be bound by contract in writing *s. 3. Eng.*
 to serve as a clerk to any attorney or solicitor, as by the *Clerks to make*
 2 Geo. 2. c. 23. is directed, shall, within three months *affidavit of exe-*
 after the date of such contract, cause an affidavit to be *cution of con-*
 made and sworn, of the actual execution of such con- *tracts within 3*
 tract, by such attorney, &c. and the person so bound; *months.*
 and in such affidavit shall be specified the names of such
 attorney, &c. and of such person so bound, and their
 places of abode, together with the date of such contract;
 and every such affidavit shall be filed within the time
 aforesaid, in the court where the attorney, &c. to whom
 such person shall be bound hath been inrolled; and the
 officer shall sign a memorandum of the day of filing such
 affidavit, at the back or at the bottom thereof: And by
 s. 4. no person bound as aforesaid shall be admitted or in- *s. 4.*
 rolled an attorney or solicitor, before such affidavit, so *None to be ad-*
 marked by the proper officer, shall be produced and read *mitted before*
 in *such affidavit be*
produced.

- s. 5. in court. By s. 5. the persons following shall be the proper officers for filing such affidavits in the courts after mentioned, viz. in chancery, the senior clerk of the petty bag office, or his deputy; in the king's bench, the chief clerk of that court, or his deputy; in the common pleas, the clerk of the warrants, or his deputy; in the exchequer, the king's remembrancer, or his deputy; in the court of the duchy chamber of Lancaster at Westminster, the chief clerk, or his deputy; and in the several counties palatine, the respective prothonotaries and their respective deputies; and in the several courts of the great sessions of Wales, the prothonotaries and deputies.
- Officers who are to file such affidavits.*
- s. 6. And by s. 6. every such officer or his deputy, filing such affidavit, shall keep a book wherein shall be entered the substance of such affidavit, specifying the names and abode of such attorney or solicitor, and clerk, and of the person making such affidavit, with the date of the articles, and the days of swearing and filing such affidavit; and every such officer, &c. may take, at the time of filing every such affidavit, 2s. 6d. and no more; and the said books may be searched in office hours by any person, without fee.
- Books to be kept for entering names, &c. of attorneys and clerks.*
- s. 7. By s. 7. no attorney or solicitor shall retain any clerk bound by contract in writing as aforesaid, after he shall have discontinued, or during such time as he shall not actually practise as an attorney, &c. And by s. 8. every person bound as by said act is directed, shall, during the whole time of service specified, continue and be actually employed by such attorney or solicitor, or his agent, in the proper business of an attorney, &c.
- No attorney to take a clerk after discontinuing business.*
- s. 8. But by s. 9. if any such attorney or solicitor, to whom any such person shall be so bound, shall die or discontinue practice, or if such contract shall by consent of the parties be cancelled, or in case such clerk shall be legally discharged by any rule or order of the court wherein such attorney, &c. shall practise, before the expiration of such term, and the clerk shall be bound by another contract in writing to serve, and shall accordingly serve in manner before mentioned, as clerk to any other practising attorney, &c. during the residue of the said term of 5 years, then such service shall be deemed
- Clerks to be employed in their proper business.*
- s. 9. *In what cases part of the term of 5 years may be served with another attorney, &c.*

as good as if such clerk had continued to serve for the said term to the same person, to whom he was originally bound, so as an affidavit be made and filed of the execution of such 2d or other contract within the time, and in like manner as before directed concerning such original contract*. By s. 10. every person bound shall, before he be ad-

s. 10.

mitted an attorney or solicitor according to the said act, cause an affidavit of himself, or such attorney, &c. to whom he was bound, to be made and filed with the proper officer, that he hath actually served and been employed by such practising attorney, &c. to whom he was bound, or his agent, during the said whole term of 5 years, according to the meaning of this act. By s. 16. any

Clerks to make affidavit of having served 5 years.

s. 16.

person admitted a sworn clerk in the office of the six clerks of the court of chancery, or bound by contract in writing to serve as a clerk for 5 years to a sworn clerk in said office, and who for the said term of 5 years shall have continued in such service, or shall have continued in such service for 3 years or more, and shall have been admitted a waiting clerk, and acted as such during the residue of the said 5 years, may be examined, sworn, admitted, and inrolled as a solicitor. And by s. 17. if

Sworn clerks in the office of the six-clerks, or persons bound to them, may be admitted solicitors.

s. 17.

any sworn clerk in the said six-clerks office, to whom any person shall be bound by contract in writing to serve as a clerk for 5 years, shall die, or such contract shall by consent of the parties be vacated, or such clerk be legally discharged by any rule or order of the court of chancery, before the expiration of the said 5 years; then if such clerk shall by contract in writing be obliged to serve, and shall accordingly serve, as a clerk to any other sworn clerk in the said six clerks office, or to any solicitor sworn, admitted and inrolled, pursuant to the 2 Geo. 2. c. 23. during the residue of the said 5 years, then such service shall be as good as if such clerk had continued to serve as a clerk for 5 years to the same person to whom he was originally bound. By s. 18. no

Such clerks may in case of the death of master &c. serve the residue of term with another.

s. 18.

sworn clerk in the said six clerks office shall have more than 2 clerks at the same time, including the clerk entered in the roll kept by the master of the rolls or his

No such sworn clerk to have more than 2 clerks.

secretary.

* A similar clause was contained in the 2 Geo. 2. c. 23. s. 12. Eng.

s. 19.

*Persons ex-
empted.*

secretary. And this act provides (s. 19.) that nothing in this act shall extend to the binding, examination, swearing, admission, or inrolment of the attornies, or clerks of the offices of the king's remembrancer, pipe, or office of pleas, in the court of exchequer, at Westminster ; but the said attornies and clerks of the said offices may be taken, bound, approved, sworn, admitted, and practise in the said court of exchequer, as before the making of this act ; and may practise in any other of the courts of record before mentioned, in the name and with the consent of some sworn attorney of such court, such consent being in writing and signed by such attorney, as they might have done before the making of this act.

*The name of the
attorney to be
written on every
writ, &c.*2 Geo. 2. c. 23.
s. 22. Eng.

By the 2 Geo. 2. c. 23. s. 22. Eng. every process for arresting, and every writ of execution, or some label annexed to such writ or process, and every warrant upon such process, &c. shall, before service or execution, be subscribed or indorsed with the name of the attorney, clerk in court, or solicitor, by whom such process, &c. shall be sued forth ; and where such attorney shall not be the person immediately employed, then also with the name of the attorney so immediately employed : and every copy of any writ served upon any defendant, shall before service be subscribed with the name of the attorney, &c. immediately employed. But by the 12 Geo. 2. c. 13. s. 4. Eng. the not subscribing or indorsing the name of the attorney, clerk in court, or solicitor, on any warrant made upon any writ, process or execution, shall not vitiate the same ; but such writ, &c. and all proceedings thereon shall be valid, provided the writ, whereon such warrant is made out, be regularly subscribed or indorsed : and every sheriff or other officer, who shall make out any warrant upon any writ, &c. and shall not subscribe or indorse the name of the attorney, &c. who sued out the same, shall forfeit £5. to be assessed as a fine by the court out of which such writ, &c. shall issue, one moiety to his majesty, and the other to the person aggrieved.

12 Geo. 2. c. 13.
s. 4. Eng.*But the want
thereof shall
not vitiate writ.**Penalty for such
neglect of offi-
cers.**In Ireland at-
tornies and so-
licitors to serve
apprenticeships
of 5 years.*

By the 7 Geo. 2. c. 5. s. 2. Ir. no person shall be admitted an attorney, or licensed to be a solicitor, in any of the four courts, who shall not have served an apprenticeship

ticeship for 5 years, to a six-clerk of the court of ^{7 Geo. 2. c. 5. s. 2. Ir.} chancery in this kingdom, or in England, or to an attorney of one of the said other courts in this kingdom or to a solicitor admitted and licensed as herein mentioned, or to an attorney or solicitor duly admitted and licensed in England; and who shall not, before such admission, procure an affidavit of such service to be made in the court where such person shall be admitted, or before some person authorized by such court to take affidavits, in case such service be in this kingdom; but in case such service be in England, then before a master of chancery there; which affidavit shall be filed in such office, belonging to such court, as the lord chancellor, or the judges of the respective courts where such person shall be admitted, shall appoint; for the filing of which affidavit, or swearing the same, no fees shall be taken; and shall take all the oaths and subscribe the declaration (against popery*) required of persons to be admitted into offices by the 2 Ann. c. 6. Ir. : But if it shall afterwards appear to the lord chancellor, or the judges of the respective courts, that the facts in any such affidavit are not true, it shall be lawful for the lord chancellor, &c. to declare the admission of such attorney or solicitor to be void; and after such declaration such attorney, &c. shall be disabled to practise, and shall be liable to be prosecuted for perjury. And by s. 4. every master in chancery, barrister, six-clerk, attorney, and officer of any of the four courts, and every deputy of such officer, and every solicitor to be licensed by this act, shall take the following oath:—"I, A. B. do sincerely promise and swear, that I will not willingly or knowingly suffer any [barrister at law] attorney, solicitor, or other person, who by any act of Parliament made in this kingdom is disqualified to practise as a [barrister at law,] attorney, or solicitor, to act or practise in my name in any suit, cause, or matter, in any court of law or equity in this kingdom," which oath

Affidavit of such service to be filed.

Oaths of allegiance, &c. to be taken.

Penalty for perjury therein.

s. 4.

Further oath to be taken by attornies, &c.

* So much of this act and of the 6 Ann. c. 6. Ir. and 17 Geo. 2. c. 20. Ir. as excluded papists, or persons married to papists, or educating their children in the popish religion, from being attornies, or solicitors, or apprentices or clerks, is repealed by the 32 Geo. 3. c. 21. s. 2. 3. 4. 5 & 6. Ir.

[every

*Summary mode
of convicting
and punishing
disqualified per-
sons acting as
solicitors.*

s. 5.

[every barrister shall take some time in the same term] and every master in chancery, six-clerk, attorney and officer, and solicitor, shall take in any of the said courts in which he shall be admitted or licensed, at the time of such admission, or granting such license; which oath the lord chancellor, and the judges of each of the four courts, or any of them, are empowered to administer; and in case they shall omit to take the same they shall be incapable of acting or practising until they take such oath. And by s. 5. the judges of the respective courts are required, on reasonable suspicion, or on notice given to them in writing, signed by the person giving such notice, to summon any disqualified solicitor who shall presume to act, and such other persons as such judges shall think proper, to appear before such judges, and to examine upon oath such other persons in relation to such practice; and, if such disqualified person shall upon summons in writing duly served refuse or neglect to appear, or if, after appearance, by his voluntary confession, or proof made upon oath, it shall appear that he has acted as a solicitor, to punish such disqualified solicitor, as for a contempt of court, by fine or imprisonment, so as such fine do not exceed £50. nor be less than £25. and so as such imprisonment do not exceed 6 months; but in case of such punishment, such party shall not be liable to any other punishment. And by s. 6. every person shall be deemed a solicitor who, (not being a barrister duly qualified, master in chancery, six-clerk, or officer of one of the said courts, or his deputy, attorney, or qualified solicitor,) draws, dictates, or abbreviates pleadings, or transcribes or abbreviates any depositions or other evidence, in order to be made use of in any suit at law or in equity, or takes upon himself the direction or management of any cause or suit, or the defence thereof, in any of the said four courts, wherein he is not a party, nor concerned in interest. By s. 7. every solicitor shall be licensed or authorized to practise by the lord chancellor, master of the rolls, lord chief baron and other barons of the exchequer, by writing under their hands and seals; and such license shall be registered

s. 6.

*Who to be deemed
solicitors.*

s. 7.

*Solicitors to be
licensed by
Chancellor, &c.*

registered, in such office as the respective courts shall appoint, before they shall practise. And by s. 8. the respective courts in which any solicitor shall be licensed and registered, shall on the first day of the next term cause his name to be wrote on paper or parchment, and fixed in the most public place of such court, there to remain for that term. By s. 17. no person shall practise as solicitor before the justices of assize, or oyer and terminer, and gaol delivery, in their respective circuits, or before the commissioners of the revenue, or their sub-commissioners, or the commissioners of appeal, unless such person may lawfully act in one of the four courts in Dublin; and in case any disqualified person shall practise as a solicitor in such circuits, &c. he shall be punished as by this act is appointed. Provided (s. 18.) that this act shall not extend to any prosecutions for any crimes that are to be punished with death; but such persons may practise in such suits as before this act.

s. 3.

Their names to be posted the next term.

s. 17.

Disqualified persons acting on circuit, &c. liable to penalties.

s. 18.

Exception as to capital cases.

By the 13 & 14 Geo. 3. c. 23. s. 1 Ir. the judges of the king's bench, or any two of them, are required to appoint the prothonotary of said court, or his deputy, and 4 of the most reputable practising attornies of said court, to examine all persons applying to be admitted attornies of said court, to continue during the pleasure of said court; and if said persons shall be displaced, disqualified to act, or disabled to practise, to appoint others in their places, so that the number of examiners shall not be less than four. And by s. 2. the judges of the common pleas, or any two of them, are in like manner empowered and required to appoint the prothonotary of that court, or his deputy, and 4 other attornies of said court, to examine persons applying to be admitted attornies thereof. And by s. 3. the barons of the exchequer, or any two of them, are required in like manner to appoint the chief remembrancer, the treasurer, or second remembrancer, and the clerk of the pleas of the exchequer, or their deputies, and 4 attornies of said court, to examine persons applying to be admitted attornies thereof. By s. 4. no person shall be admitted an attorney of any of said courts, unless, besides the requisites appointed by

*Examiners to be appointed in the court of K. B.**13 & 14 Geo. 3. c. 13. s. 1. Ir.*

s. 2.

The like in C. B.

s. 3.

Who examiners in Exc.

s. 4.

*Certificates of
3 examiners as
to morals, &c.
a necessary qua-
lification for an
attorney.*

s. 5.

*Notice required
to be posted of
application for
admission.*

s. 8.

*None to practise
or use attorney's
name unless re-
gularly admit-
ted.*

*Conviction and
punishment.*

s. 9.

Proviso.

by the 7 Geo. 2. c. 5. such person shall first procure a certificate of the said examiners, or 3 of them, setting forth that they have strictly inquired and examined into the morals and qualifications of the person so applying to be admitted an attorney, and that they think him a proper person to be so admitted; which certificate shall be filed in the court of which such person shall so apply to be admitted; and a certificate thereof shall be openly read in the said court previous to his being sworn an attorney. And by s. 5. every person who shall so apply to be admitted, shall give notice thereof in writing, to be posted upon each of the said courts one full term preceding such intended application, specifying therein his name and surname, whom he served, the names and additions of his parents, and, if they be living, where they reside; and such publication of said notice shall be made appear to the said examiners of such court, or 3 of them, by an affidavit filed in the proper office of such court; and for the filing and attesting the copies thereof, 2s. shall be paid. By s. 8. no person shall practise or make use of the name of any attorney of the said four courts, unless he shall have been regularly admitted an attorney in some of said courts; and it shall be lawful for the judges and barons of said courts respectively, wherein any person not properly qualified shall act or practise, or make use of the name of any attorney, by order of court to require such person, and every other person they shall think proper, to appear before them in court, and to examine upon oath such person in relation to such practice; and if such unqualified person, or such person permitting his name to be made use of, shall, upon such order being duly served upon him, refuse or neglect to appear, or if, after appearance, by his confession, or by proof made upon oath, it shall appear that such person hath so practised, or permitted his name to be made use of, then it shall be lawful for said judges and barons respectively to punish such person as for a contempt of court. But it is provided (s. 9.) that this act shall not extend to prevent the said judges or barons from examining and inquiring into the character and qualifications

ons of such persons as shall apply to be admitted attorneys, or from admitting, or refusing to admit such persons, in such manner as heretofore lawfully used*.

With respect to apprentices : The 7 Geo. 2. c. 5. *Apprentices to register their indentures.* s. 3. Ir. enacts that every six-clerk, attorney, or solicitor, shall, in the next term after his taking an apprentice, 7 Geo. 2. c. 5. s. 3. Ir. register the indentures of apprenticeship, in such office

as the respective courts shall appoint ; for which registry such apprentice shall pay 1s. ; and in default of such registry, no such apprentice's service shall qualify him to be admitted an attorney or solicitor. And by s. 14. if s. 14.

any six-clerk, attorney, or solicitor, to whom any person shall be bound by indenture, shall die before the expiration of the 5 years, or if such contract shall by mutual consent be vacated, or in case such clerk be discharged by order of the court, wherein such six-clerk &c. shall practise, before the expiration of said 5 years, then, if such clerk shall, by indenture, serve as a clerk to any other six-clerk, &c. who shall be qualified as hereby directed, during the residue of said 5 years, such service shall be deemed as good, as if such clerk had continued to serve the person to whom he was originally bound. *In case of death, &c. of master, residue of term may be served with another.*

The 13 & 14 Geo. 3. c. 23. s. 6. Ir. further provides, that no person shall be admitted an attorney, unless he shall make appear to the judges of the court in which he applies to be admitted, by affidavit to be filed in the proper office, or an attested copy thereof, (for the filing and copy of which 2s. shall be paid) or in such other manner as such judges shall appoint, that as well the attorney to whom he shall have been bound, shall have served according to the 7 Geo. 2. c. 5. as also that the person so applying to be admitted shall have, for 3 years next before such application, attended for 2 terms at least in every year at the four courts in Dublin, or such one of them whereof such attorney is a member. 13 & 14 Geo. 3. c. 23. s. 6. Ir.

Provided (s. 7.) that in case of sickness, or unavoidable *Affidavit required for such apprentices.* s. 7. *Proviso.*

* By the 3 Edw. 4. c. 2. Ir. the fees for attorneyship in every plea, by writ or bill, are limited to 12d. and for the copy of every writ original 4d. and for the copy of other bills and records by the discretion of the justices ; and if any clerk, attorney, keeper of writs or records, shall take more, or refuse to be attorney, or refuse the copy of any writ, bill, or record, he shall lose to the party grieved 100s. and be forejudged the court ; but the clerks of chancery are hereby excepted.

accident,

accident, the judges and barons respectively may make such allowances and exceptions as they shall think fit.

7 Geo. 2. c. 5.
s. 9. Ir.

Number of ap-
prentices limited.

s. 15.

Exception as to
certain officers.

By the 7 Geo. 2. c. 5. s. 9. Ir. no six-clerk shall have at any one time more than 6 apprentices, nor any attorney or solicitor more than three. Provided, (s. 15.) that the chief remembrancer and clerk of the pleas of the exchequer, and other officers of said court, and the clerk of the crown and other officers of the king's bench, and the prothonotary and other officers of the common pleas, and the clerk of the crown and hanaper, and the register, usher, and examiners, of the court of chancery, may have each 4 clerks apprentices at a time; and such clerks having served a clerkship to any of said officers for 5 years, may be admitted attornies and solicitors of such court wherein they shall serve as clerks, in the same manner as any person who shall serve a clerkship to a sworn attorney; such clerks taking the oaths, and being qualified in every other respect to be admitted attornies or solicitors as herein before directed.

Attornies, &c.
to take the oaths
of allegiance,
&c.

7 & 8 W. 3. c. 24.
Eng.

By the 7 & 8 W. 3. c. 24. Eng. if any person shall act as [a serjeant at law, counsellor at law, barrister, advocate] attorney, solicitor, proctor, clerk or notary, by practising as such in any court, not having before the time of such acting, taken in chancery, or king's bench, or quarter sessions of the county wherein he lives, the oaths (of allegiance and supremacy) appointed to be taken by the 1 W. & M. st. 1. c. 8. Eng. and made and subscribed the declaration (against transubstantiation) in the 25 Car. 2. c. 2. Eng. such person shall incur the penalties of the statute of provision and *præmunire*

1 Geo. 1. st. 2.
c. 13. Eng.

16 Ric. 2. c. 5. E. & I. And by the 1 Geo. 1. st. 2. c. 13. Eng.* as amended by the 9 Geo. 2. c. 26. Eng. the oath of abjuration was also required to be taken (as

31 Geo. 3. c. 32.
s. 22. Eng.

already stated *ante* vol. 1. p. 291.) But the 31. Geo. 3. c. 32. s. 22. Eng. provides, that the said oaths and decla-

Exception as to
Catholics.

ration by said acts respectively appointed to be taken and subscribed by persons acting as [a counsellor at law, barrister] attorney, solicitor, clerk, or notary, shall be no longer administered to any person professing the Roman catholic religion, as a qualification or requisite to enable him to act in such capacities, but the oath of allegiance, abjuration,

abjuration, and declaration herein appointed, shall* be ^{*Vide vol. 1. p. 298.} taken and subscribed by such Roman catholics in the stead of said oaths and declaration, and be registered in the same manner as the said oaths and declaration for which it is substituted. And by the 1 Geo. 2. c. 20. s. 1. Ir. ^{1 Geo. 2. c. 20. s. 1. Ir.} every person who shall apply [to be called to the bar, or] to be admitted a six-clerk or attorney, or shall take upon him to practise as a solicitor, or to act as an officer, or deputy officer, in any of his majesty's courts of law or equity, shall, before such application, &c. take and subscribe the several oaths (viz. of allegiance, supremacy, and abjuration,) and repeat and subscribe the declaration (against popery) mentioned and appointed in the 2 Ann. c. 6. Ir. But by the 32 Geo. 3. c. 21. s. 1. Ir. ^{32 Geo. 3. c. 21. s. 1. Ir.} the oaths and declaration in and by the 6 Ann. c. 6. s. 1. Ir. and 1 Geo. 2. c. 20. Ir. required to be taken and subscribed by every person who shall be admitted to practise as a (counsellor or barrister at law,) attorney, solicitor, or notary, shall be no longer required to be taken, &c. by any person professing the Roman catholic religion, as a qualification to enable him [to be admitted to the bar, or] to act as an attorney, &c.; but the oath appointed to be taken and subscribed by the 13 & 14 Geo. 3. c. 35. Ir. ^{† Vide vol. 1. p. 294.} shall be administered, taken, and subscribed, to and by persons professing the Roman catholic religion, in the same court, and registered in the same manner, as the oaths and declaration, in the room of which the said oath is substituted, are required to be taken, &c: but nothing herein shall qualify any person to be king's counsel.

By the 2 Geo. 2. c. 23. s. 23. Eng. no attorney or solicitor of any of the said courts (*vide* s. 1. page 14.) shall commence or maintain any action for fees, charges or disbursements, at law or in equity, till the expiration of one month after he shall have delivered to the party, or left for him at his dwelling house, or last place of abode, a bill of such fees, &c. written in a common hand, and in English, (except law terms and names of writs) and in words at length,† (*except times and sums*) which bill

Attornies, &c. not to commence actions for fees till a month after delivery of their bills.

2 Geo. 2. c. 23. s. 23. Eng.

† By the 12 Geo. 2. c. 13. s. 5. Eng. every attorney, clerk in court, and solicitor, may write his bill of fees, charges, and disbursements, with such abbreviations as are commonly used.

shall

• Not in the
7 Geo. 2. c. 14.
s. 9. Ir.

Judges to refer
bills to be taxed.

† "Should have
been liable to
for breach of
any order of
court." in the
7 Geo. 2. c. 14.
s. 9. Ir.

shall be subscribed with the proper hand of such attorney or solicitor ; and upon application of the party chargeable by such bill, or of any other person in that behalf authorized, to the lord chancellor, [* or the master of the rolls,] or to any of the courts aforesaid, or to a judge or baron of any of the said courts, in which the business contained in such bill, or the greatest part thereof in value, shall have been transacted ; and upon submission of the said party to pay the sum that upon taxation shall appear to be due, the lord chancellor, &c. may refer the said bill (though no action or suit shall be then depending touching the same) to be taxed by the proper officer, without any money being brought into court ; and if the attorney, &c. or the party chargeable by such bill, having due notice, neglect to attend such taxation, the officer may proceed to tax such bill *ex parte*, (pending which reference and taxation no action shall be prosecuted touching the said demand,) and upon taxation of such bill the party shall pay to the attorney, &c. or to any person by him authorized, that shall be present at the taxation, or as the court shall direct, the sum which shall be found due ; which payment shall be a discharge of the bill ; and in default thereof the party shall be liable to an attachment or process of contempt, or such other proceeding, at the election of the attorney, &c. as such party [† was before liable to] ; and if on such taxation it shall be found, that the attorney, &c. shall have been overpaid, he shall refund to the party entitled, or to any person by him authorized, if present at the settling thereof, or otherwise as the court shall direct, all the money that the officer shall certify to have been overpaid ; and in default thereof, the attorney, &c. shall in like manner be liable to an attachment, or process of contempt, or such other proceeding, at the election of the party, as he would have been subject to if this act had not been made ; and the said courts are required to award the costs of such taxation to be paid according to the event of the taxation, viz. if the bill taxed be less by a 6th part than the bill delivered, then the attorney, &c. is to pay the costs ; but if it be not less

less, then the court in their discretion shall charge the attorney or client in regard to the reasonableness or unreasonableness of such bills. The 7 Geo. 2. c. 14. Ir. contains (by s. 9.) a corresponding provision. But by the 12 Geo. 2. c. 13. s. 6. Eng. the 2 Geo. 2. c. 23. shall not extend to any bill of fees and disbursements, due from any attorney or solicitor to any other attorney or solicitor, or clerk in court; but such attorney, &c. may use such remedies against such other attorney, &c. as he might before the said act. By the 3 Jac. 1. c. 7. s. 1. Eng. no attorney, solicitor, or servant to any, shall be allowed fees given to counsel, or sums paid for copies, &c. to clerks or officers, unless he have tickets thereof signed by them that receive such fees; and he shall also give unto his client true bills of all the charges of suit under his own hand, before he can charge his client with the payment thereof. And if he delay his clients suit for gain, or demand by his bill allowance for money which he hath not disbursed, the party grieved shall recover against him his costs and treble damages, and he shall be from thenceforth discharged from being an attorney or solicitor.

12 Geo. 2. c. 13. s. 6.

Exception as to bills of fees between one attorney, &c. and another.

3 Jac. 1. c. 7. s. 1 Eng.

Fees to be certified by counsel.

It is to be observed, that several provisions concerning attornies and solicitors, and their apprentices, are contained in the stamp acts of England and Ireland, for enforcing the duties thereby respectively made payable upon their indentures of apprenticeship, upon their being admitted and sworn, and upon the certificates which are annually required to be taken out.

No statute made in England has regulated the admission to the bar, save by prescribing the oaths above-mentioned as a qualification for practising. But in Ireland by the 33 Hen. 8. st. 2. c. 3. s. 3. Ir. no person, except the plaintiff or demandant, tenant or defendant, shall be admitted or allowed as a pleader in any of the four courts, or to make or exhibit in any of said four courts any declaration or bill, plea in bar, replication, or rejoinder, or give evidence to any jury, unless it be for the king, or to do any other thing in said courts which customably hath been done by one learned in the king's law, but such person as shall be, at one or several times,

Attendance at the inns of court in England a qualification for the Irish bar.

33 Hen. 8. st. 2. c. 3. s. 3. Ir.

* No number
specified.

by the space of* years at the least demurrant and resiant in one of the inns of court in England, studying, practising, or endeavouring to come to the knowledge of the laws; upon pain of 100s. The 21 & 22 Geo. 3. c. 33. Ir. which limited the number of years during which persons applying to be admitted to the bar were to be students in the society of king's inns in Ireland, and the number of terms during which they were to reside or keep commons in said society, or in the society to which they belonged in Great Britain, (with an exception in favour of degrees obtained at the university of Dublin, or at those of Oxford or Cambridge) was repealed by the 32 Geo. 3. c. 18. Ir. which was passed for the purpose of confirming certain letters patent granted to the society of king's inns in Ireland, bearing date the 27th Feb. 1792. But these letters patent, and the 32 Geo. 3. c. 18. so far as it related to their confirmation, were repealed by the 33 Geo. 3. c. 44. Ir. With respect to the oaths to be taken as a qualification for admission to the bar in Ireland; the 1 Geo. 2. c. 20. Ir. 7 Geo. 2. c. 5. Ir. and 32 Geo. 3. c. 21. Ir. (the provisions of which have been already stated in respect to attornies, &c.) extend also to counsellors or barristers at law.

1 Geo. 2. c. 20.
Ir.

7 Geo. 2. c. 5.
Ir.

32 Geo. 3. c. 21.
Ir.

CHAP. III.

Of the Courts of Common Law and Equity.

§ 1. THE 17 Edw. 4. c. 2. E. & I. recites, that to every fair, whether held by prescription or grant, is of right pertaining

pertaining a court of *piepoudre*; in which court it hath been at all times accustomed, that every person coming to the said fairs, shall have lawful remedy of all contracts, trespasses, covenants, debts, and other deeds made or done within said fairs, during the time of said fairs, and within the jurisdiction of the same, and to be tried by merchants being at the same fair; and enacts that no steward, or other minister of any such court of *piepoudre*, shall hold plea upon any action, unless the plaintiff, or his attorney, in the presence of the defendant, shall swear upon the holy evangelist, that the contract, trespass, or other matter contained in the declaration, was made or committed within the fair, and within the time of the said fair, and within the jurisdiction of the same. And although the plaintiff shall so affirm the same, yet the defendant may plead to the action, or in abatement of the plaint, or tender an issue, that the same contract, &c. contained in the declaration, was not committed or done within the time of the fair, and jurisdiction of the same. And if it be so found, or that the plaintiff or his attorney shall refuse to take such oath as aforesaid, the defendant shall be dismissed out of said court, and such plaintiff may sue elsewhere. And every steward or other minister, holding any court contrary to this ordinance, shall forfeit 100s. one half to the king, and the other to him that will sue upon this ordinance by action of debt in his own name.

An exclusive jurisdiction is given to sheriffs in their *county courts* by the 6 Edw. 1. c. 8. E. & I. which provides, that sheriffs shall plead pleas of trespass in their counties, as they have been accustomed; and none shall have writs of trespass before justices, unless he swear by his faith that the goods were worth 40s. at least; and if he complain of beating, he shall swear by his faith that his plaint is true; touching wounds and maims a man shall have his writ as before. And defendants in such pleas may make their attornies, where appeal lieth not, so that if they be attainted, being absent, the sheriff shall be commanded to take them. And if the plaintiffs in such trespasses cause themselves to be es-
soined after the first appearance, day shall be given them

*Jurisdiction of
the court of pie-
poudre.*

17 Edw. 4. c. 2.
E. & I.

§ 2.

*Jurisdiction of
county courts.*

6 Edw. 1. c. 8.
E. & I.

unto

unto the coming of the justices in eyre, and the defendants in the mean time shall be in peace. If the defendant essoin himself in the king's service, and do not bring his warrant in at the day given, he shall recompence the plaintiff's damages for the day, 20s. or more, after the discretion of the justices, and shall be grievously amerced.

11 Hen. 7. c. 15. Eng. By the 11 Hen. 7. c. 15. Eng. no sheriffs, undersheriffs, nor shire-clerks, shall enter any complaints in any man's

Abuses of sheriffs in entering of complaints restrained.

name, unless the plaintiff be in person present, or by attorney known to be of good name, and find pledges to pursue his complaint, persons known in that county: And the plaintiff shall have but one complaint for one trespass or contract: and if the sheriffs, &c. take more complaints than the plaintiff supposed that he hath cause of action, the sheriffs, &c. shall forfeit 40s. the one half to the king, and the other to him that will sue by action of debt or information in the exchequer; and the justices of peace shall have authority, upon complaint made by the party grieved, to examine the sheriffs, &c. and if the justices of peace, or one of them, find default in the sheriffs, &c. in entering of complaints deceitfully for their advantage, contrary to this act, the sheriffs, &c. shall be convict and attaind of the offence, and shall forfeit 40s. to the king; and the justices that shall take the examination shall certify the same within a quarter of a year into the exchequer, upon pain of 40s. And the said sheriffs, &c. shall make a precept to the bailiff of the hundred to attach or summon the defendants so in suit, to appear and answer to the complaints; and if there be any default in the bailiffs of the hundreds in warning of the defendants, or in executing their office, they shall forfeit unto the king 40s. and be attaind and convict thereof by like examination of the

2 & 3 Edw. 6. c. 25. s. 2. Eng. justices of peace. And by the 2 & 3 Edw. 6. c. 25. s. 2. Eng. the county courts shall be kept every month,

County courts to be kept every month.

and not otherwise. But in Ireland the 36 Geo. 3. c. 39.

36 Geo. 3. c. 39. Ir.

County courts not to hold pleas of actions.

Ir. recites, that great oppression has been practised by the abuse of process issuing from the county courts; and therefore enacts, that the county courts shall not hold plea in any action, nor shall any writ or process in any action issue from any county court, against any person,

or

or their goods or chattels. Provided (s. 2.) that nothing s. 2.
 in this act shall deprive any such court of any juris- Except reple-
 diction in making replevin, and deliverance of dis- vins.
 tresses. And the 3 Geo. 2. c. 9. s. 3. Ir. recites, that 3 Geo. 2. c. 9.
 sheriffs of counties have taken upon them to appoint ob- s. 3. Ir.
 scure and indigent persons to exercise a pretended office Appointment of
 called the office of barony-clerk, in the several baronies barony clerks
 of their counties; which persons have taken upon them prohibited.
 to hold county courts within such barony; and enacts, that
 no sheriff shall appoint any person to be a barony clerk
 within his county; and in case of such appointment, no
 person shall hold any court, or exercise any authority un-
 der colour thereof, and if any sheriff shall offend Penalty.
 herein he shall forfeit £50 to be recovered by ac-
 tion of debt, in any of the four courts in Dublin, where-
 in, &c.; and if any person shall exercise said pretended
 office, upon information given thereof upon oath unto any
 justice of peace of the county, such justice shall, unless suf-
 ficient bail be given by such offender, commit him to the
 county goal, until the next assizes to be held for said coun-
 ty; where, if he shall be convicted of such offence, the
 judge of assize shall forthwith commit him to the said
 gaol for 3 months, and shall also fine him in a sum not
 exceeding £50.

III. It is one of the provisions of the great charter § 3.
 9 Hen. 3. c. 11. E. & I. that *common pleas* shall not follow
 the king's court, but shall be holden in some place certain. Court of common
 But the 7 Edw. 4. c. 4. Ir. provides, that the lieutenant pleas stationary.
 of Ireland, or his deputy, shall have power to remove the 9 Hen. 3. c. 11.
 exchequer and common place of the king, to such E. & I.
 places as shall seem expedient, by the garnishment of 7 Edw. 4. c. 4.
 28 days, (all manner of records and process being conti- Ir.
 nued and saved,) how or wheresoever the writs of the king Ambulatory in
 of any of the said places bear date or be returnable. Ireland.

IV. The moveable quality of the court of *king's bench* § 4.
 [as well as of the court of chancery,] is declared by the Court of king's
 28 Edw. 1. st. 3. c. 5. E. & I. which provides that [the bench follows the
 chancellor, and] the justices of the bench, shall follow king.
 the king, so that he shall have at all times near unto him 28 Edw. 1. st. 3.
 some sages of the law, which be able duly to order al- c. 5. E. & I.
 such matters as shall come unto the court.

The

§ 5. V. The statute of Rutland 10 Edw. 1. E. & I. which contains several clauses touching the recovery of the king's debts, provides, (s. 11.) that no plea shall be holden or pleaded in the *exchequer*, unless it specially concerns the king or his ministers. And the 28 Edw. 1. st. 3. c. 4. E. & I. also enacts, that no common pleas shall be holden in the *exchequer* contrary to the form of the great charter. The 38 Hen. 6. c. 1. Ir. recites a writ of king Edward III. to the barons of the *exchequer* of Ireland, forbidding them to entertain causes in that court, save at the suit of the king, or of the ministers of the *exchequer*, &c. and enacts, that whoever shall sue in said court, unless such plaintiff be minister to the said *exchequer*, shall lose £10 one half to the king, and the other half to the party that will sue, &c.

Jurisdiction of the exchequer.
10 Edw. 1. E. & I.
28 Edw. 1. st. 3. c. 4. E. & I.
38 Hen. 6. c. 1. Ir.
Penalty for other than ministers of the exchequer suing there.

§ 6. VI. With respect to the court of *chancery*; the statutes respecting its jurisdiction as a court of equity will be stated in another place; but as to its juridical authority as a legal court, the 13 Edw. 1. st. 1. c. 24. s. 2. E. & I. provides, that whensoever in one case a writ shall be found in the *chancery*, and in a like case falling under the same right, and requiring like remedy, no precedent of a writ can be produced, the clerks in *chancery* shall agree in forming a new one; and if they cannot agree, it shall be adjourned to the next parliament, where a writ shall be framed by consent of the learned in the law. It is proper here also to refer to the 5 Eliz. c. 18. Eng. which declares, that the keeper of the great seal may have, use, and execute, as of right belonging to his office, the same place, authority, pre-eminence, jurisdiction, execution of laws, and all other customs and advantages, as the lord chancellor. And by the 1 W. & M. st. 1. c. 21. s. 2. Eng. commissioners for executing the office of lord chancellor, or lord keeper of the great seal, may use and exercise, as of right, the same offices, authority, jurisdiction, and execution of laws, and all other customs, privileges, and advantages, which the lord chancellor or lord keeper ought.* And by s. 3. one commissioner may hear motions, and give orders touching interlocutory proceedings, in any cause

Jurisdiction of chancery.
12 Edw. 1. st. 1. c. 24. s. 2. E. & I.
5 Eliz. c. 18. Eng.
Lord keeper co-equal with lord chancellor.
1 W. & M. st. 1. c. 21. s. 2. Eng.
Lords commissioners also.
*Vide. vol. 1. p. 359.
s. 3.

cause, so as he shall not in the absence of the others *Proviso.* make any decrees, or put the great seal to any thing whereunto the whole broad seal ought to be affixed, unless there be two commissioners present. No statute has been passed in Ireland corresponding or analogous to the 5 Eliz. c. 18. Eng. or 1 W. & M. st. 1. c. 21. Eng.

VII. The court of *exchequer chamber* was first es- § 7.
 tablished as a court of appeal by the 31 Edw. 3. st. 1. *Jurisdiction of*
 c. 12. E. & I. which provides, that where a man com- *Exchequer*
 plaineth of error in the exchequer, the chancellor and *chamber.* 31 Edw. 3. st. 1.
 treasurer shall cause to come before them in any cham- c. 12. E. & I.
 ber of council nigh the exchequer, the record of the
 process, taking to them the justices and other sage per-
 sons; and shall cause to be called before them the barons
 of the exchequer to hear the causes of their judgments;
 and if error be found, they shall correct and amend the
 rolls, and send them into the exchequer to make execu-
 tion. And by the 31 Eliz. c. 1. s. 1. Eng. the not com- 31 Eliz. c. 1.
 ing of the lord chancellor and lord treasurer, or either of s. 1. Eng.
 them, at the day of *adjournment* in any suit of error de-
 pending by virtue of the 31 Edw. 3. shall not be any dis-
 continuance of such writ of error; but if *both* the chief
 justices of either bench, or any one of the said great
 officers, the lord chancellor or lord treasurer, shall come
 to the exchequer chamber, and there be present at the
 day of adjournment, the suit shall proceed. Provided
 that no judgment shall be given in any such writ of er-
 ror, unless both the lord chancellor and lord treasurer be *Proviso.*
 present. And by the 16 Car. 2. c. 2. Eng. the not com- 16 Car. 2. c. 2.
 ing of the lord chancellor and lord treasurer, or either of Eng.
 them, at the day of *return* of any writ of error sued forth
 by virtue of the 31 Edw. 3. c. 12. shall not cause any *Presence of cer-*
 abatement or discontinuance; but if *either* of the chief *tain members*
 justices, or the lord chancellor or lord treasurer, shall *when dispensed*
 come to the exchequer chamber at the day of return, the *with.*
 suit shall proceed. Provided that no judgment be given,
 unless both the lord chancellor and lord treasurer be pre- *Proviso.*
 sent. But by the 20 Car. 2. c. 4. Eng. judgment may 20 Car. 2. c. 4.
 be given in writs of error in the exchequer in the pre- Eng.
 sence of the lord keeper, notwithstanding the vacancy of
 a lord

27 Eliz. c. 8.
Eng.

Second court of
exchequer cham-
ber.

31 Eliz. c. 1.
s. 2. Eng.

What number of
members neces-
sary to be pre-
sent.

s. 3.

Proviso.

s. 4.

a lord treasurer. By the 27 Eliz. c. 8. Eng. where any judgment shall be given in the king's bench, in any action of debt, detinue, covenant, account, action upon the case, *ejectione firmæ*, or trespass, first commenced there, (other than such only where the queen shall be party) the plaintiff or defendant against whom judgment shall be given, may sue forth out of chancery a special writ of error, directed to the chief justice of the king's bench, commanding him to cause the said record, and all things concerning the said judgment, to be brought before the justices of the common bench and barons of the exchequer into the exchequer chamber, to be examined by the said justices and barons; which justices of the common bench, and such barons of the exchequer as are of the coif, or 6 of them at the least, shall thereupon have power to examine all such errors as shall be assigned or found in such judgment, and thereupon to reverse or affirm the judgment; other than for errors concerning the jurisdiction of the court of king's bench, or for want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding; and after the judgment shall be affirmed or reversed, the record, and all things concerning the same, shall be brought back into the court of king's bench for execution, &c. But the party grieved therewith may sue in parliament for the further examination of said judgment. And by the 31 Eliz. c. 1. s. 2. Eng. if the full number of justices and barons authorized by the 27 Eliz. c. 8. come not at the day of the return or continuance of any writ of error directed by that act, it shall be lawful for any three of the justices and barons to receive writs of error, to award process, and to prefix days of continuance. Provided (s. 3.) that no judgment be given in any such suit of error, unless it be by the full number of justices and barons. And provided (s. 4.) that the party against whom judgment is given in the king's bench, may at his election sue in parliament for the reversal of such judgment, as hath been accustomed. The 15 Car. 1. c. 5. Ir. 8 Geo. 1. c. 6. s. 2. Ir. and 1 Geo. 2. c. 17. s. 3. Ir. contained provisions nearly corresponding to the 31 Eliz. c. 1. s. 1. & 2. Eng. 16 Car. 2. c. 2. Eng. and 20 Car. 2. c. 4. Eng.

Eng. But no such court of exchequer chamber as was established by the 27 Eliz. c. 8. Eng. ever existed in Ireland.

Upon the union of Great Britain and Ireland a new court of error was constituted by the 40 Geo. 3. c. 39. Ir. which enacts, that it shall not be lawful to sue forth any writ of error to the court of king's bench, to reverse any judgment of the court of law before the king in chancery, or to reverse any judgment of the court of common pleas, or to sue forth any writ of error to the court now holden before the chancellor or treasurer, commonly called the exchequer chamber, to reverse any judgment of the court of exchequer; or to sue any writ of error returnable directly to parliament to reverse any judgment of the court of king's bench. And by s. 2. where judgment hath been given for the reversal whereof a writ of error may now be brought, and where judgments shall be given in any of the said courts of king's bench, in law before the king in chancery, of common pleas, and of exchequer, writs of error may be sued forth of the chancery, commanding transcripts of the records of such judgments respectively, to be brought before the chief justices and chief baron, and other justices and barons, of the courts of K. B. C. B. and Exc. into a chamber to be appointed by the chief governor of Ireland, and to be called the exchequer chamber; and the said chief justices and chief baron, and other justices and barons, or any 9 of them, shall have power to examine such judgments, and to reverse or affirm the same, and to award such judgment as to law and justice shall pertain, and to send writs to the courts from which such transcripts shall be brought, directing such courts to cause execution to be done, as if the judgment had been originally awarded therein; and further to award such costs, moderate, reasonable, or exemplary, as to them shall appear just. But by s. 3. writs of error may be sued in the high court of parliament, by any party aggrieved by any judgment of the said chief justices, chief baron, justices and barons. This clause provides, that it shall be lawful for the court of king's bench, and the said court called the exchequer chamber, to proceed to judgment in all cases now depending before them upon

Court of Exchequer Chamber in Ireland.

40 Geo. 3. c. 39. s. 1. Ir.

s. 2.

How writs of error shall be brought.

9 Judges necessary to constitute court.

s. 3.

Appeal to parliament.

*Proviso as to
suits where the
king is a party.*

s. 4.

*Meetings of
court of error
when to be.*

Salary of clerk.

upon writs of error, and that all judgments thereon to be given may be removed by writ of error to parliament, as if this act had not been passed. And it is hereby provided, that nothing herein shall give a right to any person to sue forth a writ to reverse a judgment in which the king is a party, other than as by law the same is now allowable. By s. 4. the said chief justices, chief baron, justices and barons, may adjourn and hold their sittings to and upon such days in term, or out of term, being within 20 days of the last day of every term, as to them shall seem most convenient; and it shall be lawful for any one or more of the said chief justices, chief baron, justices and barons, when 9 shall not be present, to adjourn said court. And it shall be lawful for his majesty to appoint a clerk of the said court of error, to continue during pleasure, with a salary not exceeding £300 by the year, to be paid quarterly out of the consolidated fund.

§ 8. VIII. The statute 14 Edw. 3. st. 1. c. 5. E. & I. which
*Ancient tribunal
subordinate to
the high court of
parliament.* established a court of error or appeal emanating from the
*14Edw. 3. st.1.
c. 5. E. & I.* house of peers, and representing this supreme court
of judicature, may be here stated, though this statute hath
not been acted upon in modern times. This act provides that at every parliament shall be chosen a prelate, 2 earls, and 2 barons, which shall have commission of the king, to hear by petition, complaints of delays of judgments or grievances; and they shall have power to cause to come before them at Westminster, or elsewhere, the tenor of records and processes of such judgments delayed, and to cause the justices to come before them to hear the reasons of such delays; and the chancellor, treasurer, the justices of the one bench and of the other, and other of the king's council, such as they shall think convenient, shall proceed to judgment; and the tenor of the record, together with the judgment, shall be remanded before the justices before whom the plea did depend; and they shall give judgment according to the same record; and in case the difficulty be so great that it cannot well be determined without assent of parliament, the said tenor shall be brought by the said prelate

late, earls, and barons, unto the next parliament, and there shall be a final accord taken what judgment ought to be given: and by advice of the said prelate, earls, and barons, be it ordained to increase the number of the officers, when need shall be, and to diminish in the same manner. It is provided by the 8th article of the union between Great Britain and Ireland (39 & 40 Geo. 3. c. 67. Eng. 40 Geo. 3. c. 38. Ir.) that all writs of error and appeals which might now be finally decided by the house of lords of either kingdom, shall be decided by the house of lords of the united kingdom.

39 & 40 Geo. 3.
c. 67. Eng.

40 Geo. 3. c. 38.

Ir.
The lords of the
imperial parlia-
ment the dernier
resort.

IX. The ancient statutes from which the constitution of the modern courts of assize and *nisi prius* is to be deduced, though in part obsolete, are proper for this place. By the 13 Edw. 1. st. 1. c. 30. s. 1. E. & I. two justices sworn shall be assigned, before whom assizes of *novel disseisin*, *mort d'ancestor*, and attaints shall be taken, and they shall associate unto them one or two knights of the shire; and shall take the assizes and attaints but thrice in the year; first, between the quinzime of St. John the Baptist, and the gule of August, the second between the exaltation of the holy cross and the utas of St. Michael, and the third between the epiphany and the purification; and in every shire at every assizes, before their departure they shall appoint the day of their return; and shall adjourn the assizes from term to term, if the taking them be deferred at any day by vouching to warranty, by essoin, or by default of recognitors; and if they see it profitable that assizes of *mort d'ancestor*, being respited by essoin or vouching, ought to be adjourned into the bench, it shall be lawful for them to do it, and then they shall send the record with the original writ before the justices of the bench; and when the matter is come to the taking of the assize, the justices of the bench shall remit the matter to the former justices before whom the assize shall be taken; but the justices of the bench in such assizes shall give 4 days in the year before the said justices assigned. Inquisitions to be taken of trespasses pleaded before the justices of both benches, shall be determined, except the trespass be so heinous that it shall

§ 9.

Justices of as-
size and nisi
prius how as-
signed.

13 Edw. 1. st. 1.
c. 30. s. 1.
E. & I.

Adjournment of
assizes.

Inquisitions of
trespass.

Writ of nisi prius.

s. 2.

Assizes of darrein presentment and quare impedit.

Clerk of assize,

Jury.

27 Edw. 1. st. 1. c. 4. E. & I.

shall require great examination : Inquisitions also of other pleas pleaded in either of the benches shall be determined before them, wherein small examination is required, as when the entry or seisin of any is denied, or in case when one article is to be inquired ; but inquisitions of many and great articles, the which require great examination, shall be taken before justices of the benches, except both parties desire that the inquisition may be taken before some of the associates, when they come into those parts ; so that it shall not be done but by two justices, or one with some knight of the county, upon whom the parties can agree : And such inquisitions shall not be determined by any justices of the bench, unless a day and a place certain be appointed in the shire in the presence of the parties, and the day and place shall be mentioned in a writ judicial by these words : *Præcipimus tibi quod venire facias coram justiciariis nostris apud Westmonasterium in octabis sancti Michaelis, nisi talis et talis, tali die et loco, ad partes illas venerint, duodecim, &c.* And by s. 2. when such inquests be taken they shall be returned into the benches, and there shall judgment be given, and they shall be inrolled ; and if any inquisitions be taken otherwise they shall be of no effect ; except that an assize of *darrein presentment*, and inquisition of *quare impedit*, shall be determined in their own shires before one justice of the bench and one knight, at a day and place certain in the bench assigned, whether the defendant consent or not, and there the judgment shall be given immediately. All justices of the bench shall have in their circuits clerks to inroll all pleas pleaded before them, as they have used. And the justices assigned to take assizes shall not compel the jurors to say precisely whether it is by disseisin or not, so that they shew the truth of the fact, and require aid of the justices, but if they will say that it is disseisin, their verdict shall be admitted at their peril ; and the justices shall not put in assizes or juries any other than those that were summoned to the same at first. Next by the 27 Edw. 1. st. 1. c. 4. E. & I. it was provided, that inquests and recognisances determinable before the justices of either bench, shall be taken

taken in time of vacation before any of the justices before whom the plea is brought, being associate with one knight of the same shire, unless it be an inquest that requireth great examination. And in taking such inquests the justices shall do as to them shall seem expedient, notwithstanding the 13. Edw. 1. st. 1. c. 30. *supra*. And by the 12 Edw. 2. st. 1. c. 3. E. & I. inquests and juries in pleas of land, that require not great examination, shall be taken in the country before a justice of the place where the plea is, accompanied with a substantial man of the country, knight, or other, so that a certain day be given in the bench, and a certain day and place in the country, in the presence of the parties, if the demandant require it. And inquests and juries in pleas of land that require great examination, shall be taken in the country before 2 justices of the bench. By the 12 Edw. 2. st. 1. c. 4. E. & I. the justices of *nisi prius* shall have power to record nonsuits and defaults in the country; but this statute extendeth not to great assizes. And one justice being associate with a discreet man of the country at the request of the plaintiff, shall take inquests, upon pleas that be moved by attachment and distress, and have power to record nonsuits, and to take inquests upon defaults. And as to inquests upon writs of *quare impedit* it shall be done as is contained in the 13 Edw. 1. st. 1. c. 30. *supra*; and the justices shall have power to record nonsuits and defaults in the country, and to give judgment thereupon, as they do in the bench, and there report that which they have done, and there to be inrolled. And if the justices assigned to take such inquests do not come, the parties and those of the inquests shall keep their day in the bench. By the 2 Edw. 3. c. 16. E. & I. all such inquests in plea of land shall be taken as well at the request of the tenant, as of the demandant. And by the 14 Edw. 3. st. 1. c. 16. E. & I. whosoever demandeth the *nisi prius* in the king's bench, as well at the suit of the defendant as the plaintiff, the *nisi prius* shall be granted before any justice of the place where the plea dependeth, if any of the same place may well go into those parts; and if not, then before any justice

Inquests before one justice, and one associate allowed.

12 Edw. 2. st. 1. c. 3. E. & I.

Certain inquests to be taken before 2 justices of the bench.

12 Edw. 2 st. 1. c. 4. E. & I.

Justices of nisi prius to record nonsuits, &c. as in the bench.

2 Edw. 3. c. 16. E. & I.

Inquests to be taken as well at the request of the tenant as demandant.

14 Edw. 3. st. 1. c. 16. E. & I.

of

Inquests of nisi prius may be before one justice of K. B. or C. B. or chief baron, or a serjeant.

39 Geo. 3.
c. 113. Eng.

Serjeants at law may be appointed in vacation, previous to becoming judges.

of the common bench, at a certain day, and the tenor of the record shall be sent to him, under the seal of the chief justice; at which day he shall take the inquest, and return the verdict under his seal with the writ, the tenor, and the panel, which shall be received in the king's bench and inrolled, and judgment given according to the verdict. And in the same manner in the common bench if none of the justices of the same place go, the *nisi prius* shall be granted before any justice of the king's bench. And if none of the justices of the one bench, nor the other may come in the country, the *nisi prius* shall be granted before the chief baron of the exchequer, if he be a man of the law. And in case none of the justices, nor the chief baron come, the *nisi prius* shall be granted before the justices assigned to take assizes in those parts; so always that one of the said justices assigned be justice of the one bench or the other, or the king's serjeant sworn. And if the party demand the tenor of the record to have with him to deliver to the justices, another tenor shall be delivered to the other party, if he require the same. And the justices of *nisi prius* in pleas of assizes of *darrein presentment* and *quare impedit*, shall have power to give judgments in the country according to the 12 Edw. 2. st. 1. c. 4. *supra*. The 39 Geo. 3. c. 113. Eng. recites, that it is expedient that whenever the office of chief justice or justices of either bench, or chief baron or baron of the exchequer, is vacant, a proper person should be speedily appointed to such office; and that such person should be of the degree of a serjeant at law, which degree cannot be taken in vacation; and therefore provides, that it shall be lawful for his majesty, during any vacation, whilst the office of chief justice or justice, chief baron or baron, shall be vacant, to cause a writ to be issued out of chancery, directed to such barrister as his majesty shall think fit, returnable immediately in said court, commanding such person to appear in said court, and take upon himself the state and dignity of a serjeant at law; and such person shall forthwith appear before the lord chancellor, at such time and place as the lord chancellor

lor shall appoint ; and such person, so appearing and taking the usual oaths, shall, without further ceremony, be deemed a serjeant at law ; and in case his majesty shall by writ, or by letters patent under the great seal, constitute such person to be chief justice or justice, &c. chief baron or baron, &c. such person shall be deemed to be lawfully appointed to such office. No law or usage in Ireland requires that judges should be of the degree of serjeant at law. By the 3. Edw. 2. c. 5. Ir. certain justices were to be assigned to take the assizes of *mort d'ancestor*, and of novel disseisin, in all the counties of Ireland, and to deliver the gaols in the same ; who were also required to make estreats of the fines and amercements, chattels of felons, and other profits which appertain to the king, throughout their offices, and to deliver such estreats into the exchequer twice every year, viz. : at Easter term and Michaelmas term. But the 8 Geo. 1. c. 6. s. 1. Ir. recites, that a doubt hath been made whether writs of *nisi prius* or assize can be executed before the *puisne* barons of the court of exchequer not being sworn serjeants ; and therefore, and for the speedier dispatch of business, declares, and enacts, that writs of assize and *nisi prius* may be executed before the barons of the exchequer, or any of them, or before his majesty's prime serjeant at law, attorney-general, or solicitor general, or any other of his majesty's counsel learned in the law ; [and that they or any of them may be commissioners of *oyer and terminer*, and gaol delivery,] and shall have the same power as the justices of the one bench, or the other, have in the execution of such writs or commissions.

By the 8 Ric. 2. c. 2. E. & I.* no man of law shall be justice of assizes [or of the common deliverance of gaols] in his own country ; and the chief justice of the common bench shall be assigned amongst others to take such assizes and deliver gaols ; but as to the chief justice of the king's bench, it shall be as for the most part of 100 years last past was wont to be done. And by the 33 Hen.

* By the 4 Edw. 3. c. 2. E. & I. which will be stated in another part of this work, persons of the places were excluded, (if there could be found others sufficient,) from being assigned justices to take assizes, &c.

3 Edw. 2. c. 5.
Ir.

Justices of assize, &c. appointed in Ireland.

8 Geo. 1. c. 6.
s. 1. Ir.

Who may be justice of assize, &c. in Ireland.

No man to be judge of assize, &c. in his own country.

8 Ric. 2. c. 2.
E. & I.

- 33 Hen. 8. c. 24. Eng. no justice, nor other man learned in the law, shall use the office of justice of assize within any county where the said justice was born or doth inhabit; upon pain to forfeit £100. one moiety thereof to the king, and the other moiety to the party that will sue for the same, in any of the king's courts, by action of debt, &c. By s. 3. this act shall not extend to any clerk of assizes, associate to any justice of assize: *Penalty.* Nor by s. 4. to any mayors, sheriffs, recorders, stewards, bailiffs, or other officers, born or dwelling within any city, borough, or town, but that they may be justices of assizes of fresh force or of other assizes, in the same city, &c. as before. And by s. 5. this act shall not be prejudicial to any justices of one bench or the other, for taking, hearing, or determining assizes in the said courts, nor to any justice that shall take any assize upon adjournment for difficulty. Provided (s. 6.) that any clerk of assize, during the session of assize, or *Exceptions.* *prius*, shall not be of counsel with any person within any circuit whereof he shall be clerk of assize, otherwise than to that office appertaineth; upon pain to forfeit £10. one moiety to the king, and the other moiety to the party grieved, to be sued in any court of record by action of debt &c.*. These acts so far only as respect the justices of *oyer* and *terminer* or gaol delivery are repealed by the 12 Geo. 2. c. 27. Eng. which will be stated in another place. But in Ireland the 40 Geo. 3. c. 19. Ir. enacts that so much of the 8 Ric. 2. c. 2. E. & I. as provides "that no man of law shall be justice of assizes or the common deliverance of gaols in his own county" shall not be of force in this kingdom. *In Ireland judges of assize, &c. may be in their own counties.* It was enacted by the 6 Ric. 2. st. 1. c. 5. E. & I. that the justices assigned to take assizes, [and deliver the gaols,] should hold their sessions in the chief towns of the counties where the shire courts be holden. But the 11 Ric. 2. c. 11. E. & I. recites this statute, and provides that the chancellor shall have power thereof to make remedy by *Assizes to be held in the chief towns.* advice
- 33 Hen. 8. c. 24. Eng. no justice, nor other man learned in the law, shall use the office of justice of assize within any county where the said justice was born or doth inhabit; upon pain to forfeit £100. one moiety thereof to the king, and the other moiety to the party that will sue for the same, in any of the king's courts, by action of debt, &c. By s. 3. this act shall not extend to any clerk of assizes, associate to any justice of assize: *Penalty.* Nor by s. 4. to any mayors, sheriffs, recorders, stewards, bailiffs, or other officers, born or dwelling within any city, borough, or town, but that they may be justices of assizes of fresh force or of other assizes, in the same city, &c. as before. And by s. 5. this act shall not be prejudicial to any justices of one bench or the other, for taking, hearing, or determining assizes in the said courts, nor to any justice that shall take any assize upon adjournment for difficulty. Provided (s. 6.) that any clerk of assize, during the session of assize, or *Exceptions.* *prius*, shall not be of counsel with any person within any circuit whereof he shall be clerk of assize, otherwise than to that office appertaineth; upon pain to forfeit £10. one moiety to the king, and the other moiety to the party grieved, to be sued in any court of record by action of debt &c.*. These acts so far only as respect the justices of *oyer* and *terminer* or gaol delivery are repealed by the 12 Geo. 2. c. 27. Eng. which will be stated in another place. But in Ireland the 40 Geo. 3. c. 19. Ir. enacts that so much of the 8 Ric. 2. c. 2. E. & I. as provides "that no man of law shall be justice of assizes or the common deliverance of gaols in his own county" shall not be of force in this kingdom. *In Ireland judges of assize, &c. may be in their own counties.* It was enacted by the 6 Ric. 2. st. 1. c. 5. E. & I. that the justices assigned to take assizes, [and deliver the gaols,] should hold their sessions in the chief towns of the counties where the shire courts be holden. But the 11 Ric. 2. c. 11. E. & I. recites this statute, and provides that the chancellor shall have power thereof to make remedy by *Assizes to be held in the chief towns.* advice
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* By s. 7. the justices, and clerk of assizes, within the duchy of Lancaster, are excepted.

advice of the justices notwithstanding said statute. By the 20 Ric. 2. c. 3. E. & I. no lord, nor other of the country, shall sit upon the bench with the justices to take assizes, upon pain of great forfeiture to the king; and the justices shall not suffer the contrary to be done. The 19 Geo. 3. c. 74. s. 70. Eng. recites that the courts of assize, *nisi prius*, *oyer* and *terminer*, and gaol delivery, for several counties at large, are often held in or near cities or towns that are counties of themselves, and at the same time with the like courts for the said cities or towns; and inconveniences frequently arise in transacting the business of the several courts, for that the lodgings of the judges are situate either only in the county at large, or only in the county of such city or town; and therefore enacts, that in such cases the lodgings of the judge or judges shall be taken to be situate both within the county at large, and also within the county of such city or town, for the purpose of carrying this act* into execution, and of transacting the business of the assizes for such county at large, and for the county of such city or town, during the time that such judge or judges shall remain therein for the execution of their several commissions. No statute in Ireland contains a similar provision respecting judges' lodgings. But the 23 Geo. 3. c. 38. Ir. recites, that the court-houses of several counties at large are situate within the precincts of counties of cities and counties of towns, and there are also in such counties of cities and towns, court-houses appropriated to such counties of cities and towns; and enacts that in such cases it shall be lawful for the judges of assize, commissioners of *oyer* and *terminer*, and gaol delivery, and justices of the peace, respectively, to transact all business appertaining to the assizes, and sessions of the peace, of such counties at large, or counties of cities, in either one or other of such court houses as may be most convenient; and also for the sheriffs of such counties, and their deputies, to hold the elections

Subject to be otherwise ordered by the chancellor.

20 Ric. 2. c. 3. E. & I.

No man shall sit on the bench with the justices of assize.

19 Geo. 3. c. 74. s. 70. Eng.

Where counties at large and counties of cities, &c. contiguous, judges lodgings & deemed to be in both.

23 Geo. 3. c. 38. Ir.

Where Court-houses of counties at large are contiguous to court-houses of counties of cities, &c. the one may be used for the other.

* An act to explain and amend the laws relating to the transportation, imprisonment, and other punishment of certain offenders.

for members to represent such counties in parliament, in either or both of such court-houses ; and each of them shall be considered as part of the county at large, or county of the city or town, for the purposes aforesaid.

Oath of the judges.

18 Edw. 3.st.4.
E. & I.

The oath of the justices is prescribed by the 18 Edw. 3.

st. 4. E. & I. which is as follows : “ Ye shall swear that

“ well and lawfully ye shall serve our lord the king, and

“ his people, in the office of justice, and that lawfully

“ ye shall counsel the king in his business, and that ye

“ shall not counsel nor assent to any thing which may

“ turn him in damage or disherison, by any manner,

“ way or colour ; and that ye shall not know the damage

“ or disherison of him, whereof ye shall not cause him

“ to be warned by yourself or by other ; and that ye shall

“ do equal law and execution of right to all his subjects,

“ rich and poor, without having regard to any person,

“ and that ye take not by yourself, or by other, privily

“ nor apertly, gift nor reward of gold nor silver, nor of

“ any other thing that may turn to your profit, unless it

“ be meat or drink, and that of small value, of any man

“ that shall have any plea or process hanging before you,

“ as long as the same process shall be so hanging, nor

“ after for the same cause ; and that ye take no fee, as

“ long as ye shall be justice, nor robes, of any man,

“ great or small, but of the king himself : and that you

“ give no advice to any man, great or small, in the case

“ where the king is party. And in case that any, of

“ what estate or condition they be, come before you in

“ your sessions with force and arms, or otherwise against

“ the peace, or against the form of the statute thereof

“ made, to disturb execution of the common law, or to

“ menace the people that they may not pursue the law,

“ that ye shall cause their bodies to be arrested and put

“ in prison ; and in case they be such that you cannot

“ arrest them, that you certify the king of their names,

“ and of their misprision hastily, so that he may thereof

“ ordain a convenable remedy. And that ye by your-

“ self nor by other, privily nor apertly, maintain any

“ plea or quarrel hanging in the king's court, or else-

“ where in the country. And that ye deny to no man

common

“ common right, by the king’s letters, nor none other
 “ man’s, nor for any other cause ; and in case any letters
 “ come to you contrary to the law, that ye do nothing
 “ by such letters but certify the king thereof, and pro-
 “ ceed to execute the law notwithstanding the same let-
 “ ters. And that ye shall do and procure the profit of
 “ the king, and of his crown, with all things where ye
 “ may reasonably do the same. And in case ye be from
 “ henceforth found in default in any of the points afore-
 “ said, ye shall be at the king’s will of body, lands and
 “ goods, thereof to be done as shall please him. As
 “ God you help, and all saints.” The 20 Edw. 3. c. 3. 20 Edw. 3. c. 3.
 E. & I. further provides, that all justices assigned to take E. & I.
 assizes in the country, and deliver the gaols, and such as *Justices of as-*
 shall be associated to them, shall make oath as shall be *size, &c. to take*
 enjoined by the council in chancery, before any com- *an oath.*
 mission be to them delivered.

CHAP IV.

*Of Courts Ecclesiastical, Military, and
 Maritime.*

THE jurisdiction usurped by the Pope in ecclesiastical § 1
 matters was restored to the crown, by the 24 Hen. 8. *All causes de-*
 c. 12. Eng. which enacts (s. 2.) that all causes testamen- *terminable by*
 tary, causes of matrimony and divorce, rights of tithes, *any spiritual*
 oblations and obventions, shall be heard, adjudged, and *jurisdiction, shall*
 determined, within the king’s jurisdiction : Also, all *be adjudged*
 spiritual prelates, pastors, ministers, and curates, within *within the king’s*
 this realm, shall minister all sacraments, divine services, *jurisdiction.*
 and other things, within the realm, to all the subjects of *24 Hen. 8. c. 12.*
 the same ; any foreign citations, inhibitions, suspen- *Eng.*
 sions, interdictions, excommunications, or appeals, for
 any of the causes aforesaid, from or to the See of Rome
 notwithstanding.

- s. 5. notwithstanding. And by s. 5. in cases where the king's subjects have used to pursue any appeal to the See of Rome, and in all other cases of appeals for any of the cases aforesaid, they may have their appeals within this realm, viz : from the archdeacon, or his official, to the bishop diocesan : And by s. 6. if it be commenced before the bishop diocesan or his commissary, within 15 days next ensuing the sentence, to the archbishop of the province. By s. 7. if the matter be commenced before the archdeacon of any archbishop, or his commissary, the party grieved may take his appeal, within 15 days after sentence, to the court of arches or audience of the archbishop ; and from the said court, within 15 days after sentence, to the archbishop of the province, [*to be finally determined without any farther appeal.] And by s. 9. in case any cause shall come in contention for any of the same causes in the aforesaid courts which may touch the king, the party grieved may appeal from any of the said courts, to the spiritual prelates of the upper house in the convocation next ensuing within the province, so that such appeal be taken within 15 days after sentence given. By the 25 Hen. 8. c. 19. s. 4. Eng. for lack of justice in the court of the archbishops, it shall be lawful to appeal to the king's court of chancery ; and upon such appeal a commission shall be directed under the great seal to persons named by the king, as in cases of appeal from the admiral's court, to hear and determine such appeals ; and such sentence as the commissioners shall decree shall be definitive ; and no further appeal be had. By s. 6. as to appeals from the jurisdictions of any heads of houses and places exempt, in such cases as they might afore this act have immediately any appeal to the See of Rome, such persons may take their appeals immediately to the king into the court of chancery, which appeals shall be definitively determined by authority under the king's commission as above mentioned. No statute in Ireland has established the same gradation of appeals from the several ecclesiastical courts, as was provided by the 24 Hen. 8. c. 12. Eng. *supra*. The 28 Hen. 8. c. 6. Ir. contained a provision nearly
- In what courts appeals shall be sued.*
- *Vide 25 Hen. 8. c. 19. infra.*
- Appeals in causes touching the king.*
- 25 Hen. 8. c. 19. s. 4. Eng.*
- Appeals from the archbishop's court.*
- s. 6.*
- Appeals from places exempt.*

nearly similar to the 25 Hen. 8. c. 19. s. 4. Eng. *supra* ; but this Irish statute was repealed by the 28 Geo. 3. c. 32. Ir. which enacts, that for lack of justice in any of the courts of the archbishops of this realm, the parties grieved may appeal to the king in his court of chancery ; and upon such appeal a commission shall be directed, under the great seal of this kingdom, to such persons as shall be named by the king in his court of chancery, to hear and definitely determine such appeals, and the causes and circumstances concerning the same, and in such form as hath been used on appeals to the king in his court of chancery ; and such judgment and sentence as the said commissioners shall make and decree upon any such appeal, shall be definitive, and no farther appeal be had from the same.

Upon appeals to chancery from archbishop's court, commissioners appointed.

By the 37 Hen. 8. c. 17. Eng. all persons being doctors of the civil law lawfully made in any university, which shall be deputed to be any chancellor, vicar-general, commissary, official, scribe or register, by the king, or by any bishop or other person having authority to make any chancellor, &c. may lawfully exercise all manner of ecclesiastical jurisdiction, and all censures and coercions belonging unto the same, albeit such persons be lay, married or unmarried. This statute has not been followed or adopted in Ireland.

Doctors of civil law may exercise ecclesiastical jurisdiction though married.

37 Hen. 8. c. 17. Eng.

It has been made a question whether Roman Catholics are capable of practising in the ecclesiastical courts. The 31 Geo. 3. c. 32. s. 22. Eng. which dispenses with the taking the oath of supremacy, and subscribing the declaration against popery, as a qualification for acting as counsellor at law, barrister, attorney, solicitor, clerk, or notary, omits, in its enumeration, advocates and proctors, that were included in the disabling statutes 7 & 8 W. 3. c. 24. Eng. and 1 Geo. 1. st. 2. c. 13. Eng.*

Catholics disabled from being advocates or proctors in ecclesiastical courts.

2u. ?
7 & 8 W. 3. c. 24. Eng.
1 Geo. 1. st. 2. c. 13. Eng.

* *Vide page 30.*

In Ireland papists were expressly excluded by the 6 Ann. c. 6. Ir.† from practising as solicitors, &c. in any ecclesiastical court ; and by the 1 Geo. 2. c. 20. Ir.† from being admitted to the bar, or practising as solicitors, &c. in any of his majesty's courts of law or equity : But these statutes were so far virtually repealed by the 32 Geo.

† *Vide page 31.*

32 Geo. 3. c. 21. s. 1. Ir. which enables catholics to become barristers at law, and to practise as attornies, solicitors, and notaries, upon their taking the oath of allegiance contained in the 13 & 14 Geo. 3 c. 35. Ir. These disabling Irish statutes, and this relaxing act, do none of them expressly mention advocates or proctors: but by 3W. & M. c.2. s. 4. Eng. every barrister, attorney, clerk or officer in chancery, or any other court, were required to take the oath of supremacy, and to make and subscribe the declaration against popery, before they should be admitted to enjoy or exercise any place or office, or to *practise or plead* in any court of law or equity, or other court of record or not of record: and this English statute which was made to bind Ireland was adopted by the 21 & 22 Geo. 3. c. 48. s. 3. Ir. A question therefore results, whether by the 32 Geo. 3. c. 21. s. 1. Ir. *supra*, or by the 33 Geo. 3. c. 21. s. 1. Ir. *ante* vol. 1. p. 503. (which latter statute repeals the disabilities of catholics in general with certain exceptions) Roman catholics are capable of practising or pleading as proctors or advocates in the ecclesiastical courts, (upon taking the oaths, &c. required by the 32 Geo. 3. c. 21. Ir. or 33 Geo. 3. c. 21. Ir.) from which privileges they seem to be still excluded in England.

No person shall act as notary public unless duly admitted. 41 Geo. 3. c. 79. s. 1. E.

s. 2.

Previous apprenticeship required.

Affidavit required.

For the better prevention of illiterate and inexperienced persons being admitted to the faculty of public notaries in England; the 41 Geo. 3. c. 79. s. 1. E. enacts, that no person shall act as a public notary, or do any notarial act, unless duly sworn, admitted, and inrolled, in manner herein directed. And by s. 2. no person shall be sworn, &c. as a notary, unless such person shall have been bound by contract in writing or indenture of apprenticeship, to serve as a clerk or apprentice, for 7 years to a public notary, or to a person using the art of a scrivener (according to the custom of the city of London, such scrivener being also a notary public) duly sworn, &c; and that such person shall, during said 7 years, have continued in such service; and unless such person shall, within 3 months after the date of such contract, &c. cause an affidavit to be made by one of the subscribing witnesses, of

of the execution of such contract, &c. by such notary, &c. and the person so bound; and in such affidavit shall be specified the names of such notary, &c. and of such person so bound, and their places of abode, together with the date of such contract, &c.; and such affidavit shall be sworn and filed in the court where such notary shall have been inrolled, with the proper officer, or his deputy, who shall make a memorandum of the day of filing such affidavit on the back or bottom of such contract, &c. And by s. 3. such affidavit shall be openly read in court, at the time of such person's admission and inrolment. By s. 4. the master of the faculties of the archbishop of Canterbury in London, his surrogate or commissioners, shall be the proper officers for taking and filing such affidavits. By s. 5. the duty of such officer in filing such affidavits is prescribed, and his fees in respect thereto regulated. By s. 6. no public notary, &c. shall take any clerk, &c. after such notary shall have discontinued, or during such time as he shall not practise, the business of a notary. And by s. 7. every person so bound shall during the whole time of his apprenticeship, or 7 years at least, continue and be employed in the business of a notary. Provided, (s. 8.) that if such notary, &c. to whom such person shall be bound, shall die before the expiration of such term, or discontinue his practice; or if such contract, &c. shall by mutual consent be cancelled; or in case such clerk, &c. shall be legally discharged before the expiration of such term; and shall in any of said cases be bound by another contract, &c. to serve as clerk, and shall serve as clerk &c. as aforesaid, during the residue of said term of 7 years, such service shall be good; so as an affidavit may be made and filed of the execution of such second or other contract, in manner herein before directed concerning such original contract. By s. 9. every person who shall become bound as clerk, &c. shall, before he be admitted, &c. a notary, make and file with the proper officer, (or cause the notary to whom he was bound to make and file) an affidavit that he hath served and been employed by such notary during the whole term of 7 years. By s. 10. if any notary shall act as such, or permit

s. 3.

Affidavit to be read in court of faculties.

s. 4.

Officers for taking, &c. such affidavits.

s. 5.

Duty of such officers.

s. 6.

No notary to have an apprentice but while he shall practise.

s. 7.

Apprentices to serve actually 7 years.

s. 8.

In cases of death of master, &c. residue of term may be served with another.

s. 9.

Affidavit of service required.

s. 10.

Notary permitting unqualified person to use his name, &c. struck off the roll.

s. 11.

Penalty for unqualified persons practising.

s. 13.

Proviso as to company of scriveners of London.

s. 14.

Proviso as to proctors, &c.

12 & 15.

Temporary clauses.

s. 16.

Recovery of penalties.

s. 17.

Limitation of actions.

Pleading.

Costs.

32 Geo. 3. c. 21. s. 1. Ir.

Qualification for notaries in Ireland.

permit his name to be used for or on account of any person not entitled to act as a notary, and complaint be made in a summary way to the court of faculties upon oath, such notary shall be struck off the roll of faculties, and be disabled from practising as a notary, &c.; save as to any allowances or sums that shall be agreed to be made or paid to the widows or children of deceased notaries by the surviving partners. And by s. 11. in case any person shall do any act appertaining to the function of a public notary, for gain, without being admitted and inrolled, he shall forfeit £50. By s. 13. persons applying for a faculty to become notaries within the jurisdiction of the company of scriveners of London, are required previously to take their freedom of said company. By s. 14. nothing in this act shall extend to proctors in ecclesiastical courts; nor to any secretary to any bishop, merely practising as such, nor to any person necessarily created a notary for exercising any office, or for performing any public duty under government, and not as a general practitioner: provided, that nothing herein shall exempt any proctor, being also a public notary, from the penalties, &c. by this act imposed upon any notary who shall suffer his name to be used for the benefit of any person not entitled to act as a notary. And by s. 12 & 15 exceptions are made as to persons bound before the 1st day of January, 1801, or admitted notaries before the passing of this act. By s. 16. all penalties shall be recovered in any court of record at Westminster by action of debt, &c. by any person who shall sue for his own use, with full costs. But by s. 17. such action shall be commenced within 3 calendar months after the fact, and shall be laid and tried in the county where the cause of action shall have arisen; and the defendant may plead the general issue; and shall have treble costs of verdict, nonsuit, discontinuance, or judgment upon demurrer. No statute has prescribed any qualification for becoming, or practising as, notaries in Ireland, save that the 32 Geo. 3. c. 21. s. 1. Ir. provides, that any person professing the Roman catholic religion, may become a notary upon taking the oath of allegiance appointed by the 13 & 14 Geo. 3. c. 35. Ir. instead

stead of the oaths and declaration required by the 6 Ann. c. 6. Ir. and 1 Geo. 2. c. 20. Ir. to be taken and subscribed.

II. As to *courts military*: The 13 Ric. 2. st. 1. c. 2. § 2. E. & I. recites, that the constable and marshal had encroached to them contracts, covenants, trespasses, debts, and detinues, and many other actions pleadable at the common law; and for remedy thereof declares, that to the constable appertaineth conusance of contracts touching feats of arms and war out of the realm, and also of things which touch arms or war within the realm, which cannot be determined by the common law: And enacts, that every plaintiff shall fully declare his matter in his petition, before it be sent for any man to answer thereto: And if any man will complain that any plea is commenced before the constable and marshal, which might be tried by the common law, the plaintiff shall have a writ of privy seal directed to the constable and marshal, to surcease in that plea until it be discussed by the king's council, whether the matter pertain to that court, or be tried by the common law. It was also provided by the 8 Ric. 2. c. 5. E. & I. that pleas which touch the common law should not be held before the constable and marshal.

Jurisdiction of the court of chivalry.

13 Ric. 2. st. 1. c. 2. E. & I.

8. Ric. 2, c. 5. E. & I.

III. With respect to the *maritime courts*: The 13 Ric. 2. §. 3. st. 1. c. 5. E. & I. provides, that the admirals and their deputies shall meddle with nothing done within the realm, but only with things done upon the sea. And by the 15 Ric. 2. c. 3. E. & I. of all contracts, pleas, and quarrels, and other things done within the bodies of counties, by land or by water, and of wreck of the sea, the admiral shall have no conusance, but they shall be tried and determined by the law of the land. [*But of the death of a man, and of mayhem, done in great ships, being in the main stream of great rivers, beneath the bridges near to the sea, and in no other place of the same rivers, the admiral shall have conusance;] also to arrest ships in great flotes for the great voyages of the

Jurisdiction of admiralty court.

13 Ric. 2. st. 1. c. 5. E. & I.

15 Ric. 2. c. 3. E. & I.

* A particular jurisdiction for the trial of marine felonies is established by the 28 Hen. 8. c. 15. Eng. which will be stated in another place.

king and the realm, saving to the king his forfeitures; and shall have jurisdiction in such fleets during such voyages, saving to the lords, cities, and boroughs, their liberties.

2 Hen. 4. c. 11.
E. & I.

*Special action
where jurisdic-
tion exceeded.*

The 2 Hen. 4. c. 11. E. & I. recites the 13 Ric. 2. st. 1. c. 5. and enacts, that he that finds himself aggrieved against the form of said statute, shall have his action upon the case against him that so pursues in the admiralty, and recover double damages against him; and the same pursuant shall incur the pain of £10. to the king if he be attainted. For avoiding of tedious suits in civil and marine causes, by reason of divers appeals permitted to be

8 Eliz. c. 5.
Eng.

*Sentence of de-
legates final.*

made by order of the laws civil in such causes; the 8 Eliz. c. 5. Eng. provides, that every judgment and definitive sentence in any civil or marine cause, upon appeal in chancery, by commissioners or delegates appointed by the king under the half seal, as heretofore used, shall

23 & 24 Geo. 3.
c. 14. s. 3. Ir.

*Upon appeal
from the court of
admiralty in
Ireland, com-
missioners ap-
pointed.*

be final. And by the 23 & 24 Geo. 3. c. 14. s. 3. Ir. it shall be lawful for any person who shall be aggrieved by any sentence, order, or adjudication, of the high court of admiralty in this kingdom, to appeal to the king, or lord lieutenant, in chancery, in this kingdom; and upon such appeal the chancellor shall grant a commission or delegacy to some discreet persons of this kingdom under the great seal thereof; which commissioners, &c. shall have power to determine such appeals, as well in the principal matter, as all circumstances and dependants

2 W. & M. st 2.
c. 2. Eng.

*Commissioners
for executing the
office of lord
high admiral.*

thereon. By the 2 W. & M. st. 2. c. 2. Eng. the office of lord high admiral may be executed by commissioners.

39 & 40 Geo. 3.
c. 67. Eng.

40 Geo. 3. c. 38.
Ir.

*Instance court of
admiralty in
Ireland.*

The office of lord high admiral does not exist in Ireland: But it is provided by the 8th article of the act for the union of Great Britain and Ireland, (39 & 40 Geo. 3. c. 67. Eng. and 40 Geo. 3. 38. Ir.) that from and after the union there shall remain in Ireland an instance court of admiralty for the determination of causes civil and maritime only; and that the appeal from sentences of the said court, shall be to his majesty's delegates in his court of chancery in this part of the united kingdom.

CHAP.

CHAP. V.

Of Courts of a Special Jurisdiction.

AS the forest laws have fallen into total disuse, I shall § 1.
merely refer to the statutes which relate to the jurisdic- *Forest courts.*
tion of the forest courts, of which the first is the *charta*
de foresta 9 Hen. 3. st. 2. E. & I. and the following
English statutes 21 Edw. 1. st. 2. 33 Edw. 1. st. 5.
34 Edw. 1. st. 5. *consuetud: et assisa de forest incert.*
temp. 1 Edw. 3. st. 1. c. 8. 1 Edw. 3. st. 2. c. 1 & 2.
25 Edw. 3. st. 5. c. 7. 7 Ric. 2. c. 3 & 4. 22 Edw. 4.
c. 7. 31 Hen. 8. c. 5. 32 Hen. 8. c. 35. 16 Car. 1. c. 16.
and 20 Car. 2. c. 3. also relate to this subject.

II. *Commissioners of sewers* were first established by the § 2.
6 Hen. 6. c. 5. E. & I. which authorized the chancellor *Commissioners*
during 10 years, to issue commissions of sewers into all *of sewers.*
parts of the realms, according to a form prescribed by
this act. This statute was further enforced by the
8 Hen. 6. c. 3. E. & I. and made perpetual by the 6 Hen. 8.
c. 10. Eng. several temporary statutes having been previ-
ously passed. But by the 23 Hen. 8. c. 5. Eng. a new form
of commission is appointed to be directed, where need
shall require, to such substantial persons as shall be
named by the lord chancellor, and lord treasurer, and
two chief justices, or by three of them, whereof the lord
chancellor to be one. As the court of commissioners of
sewers is but a temporary or occasional tribunal, I shall
content myself with referring to these statutes, and to the
25 Hen. 8. c. 10. Eng. 3 & 4 Edw. 6. c. 8. Eng. 13 Eliz.
c. 9. Eng. and 7 Ann. c. 10. Eng. for the particular na-
ture and extent of the jurisdiction, powers, and duties of
these

these commissioners. To these statutes there are none analogous in Ireland.

§ 3.

Local jurisdictions.

III. It is also beside the purpose of this work to detail the provisions of the several statutes which respect the court of policies of assurance in London; the court of the marshalsea and the palace court at Westminster; the courts of the principality of Wales; the court of the duchy chamber of Lancaster; the courts of the counties palatine of Chester, Lancaster, and Durham, and the royal franchise of Ely; the stannary courts in Devonshire and Cornwall; the chancellor's courts in the two universities; or the courts constituted in the city of London and other particular towns and districts in England and Ireland. But the following statutes relate

3 Edw. 1. c. 35.
E. & I.

Penalty for arresting within a liberty those that hold not thereof.

36 Geo. 3. c. 39.
s. 3. Ir.

Affidavit required previous to issuing process, from inferior courts.

29 Geo. 2. c. 19.
s. 1. Eng.

Jurors compelled to attend inferior courts of record.

s. 2.

to inferior jurisdictions in general. By the 3 Edw. 1. c. 35. E. & I. none (except the king's ministers) shall within a liberty attach any persons or their goods passing through the same, and holding nothing thereof, for any contracts, covenants, or trespasses, made or done out of such liberty, on pain to pay double damages to the party grieved, and a fine to the king. And by the 36 Geo. 3. c. 39. s. 3. Ir. no process shall be issued from any inferior court, to compel the appearance of any person who may be sued in the same, unless an affidavit shall be made by or on behalf of the party who shall apply for such process, and filed in such court, that the cause of action has arisen within such jurisdiction, or that the person against whom such process is sued is then resident within such jurisdiction. By the 29 Geo. 2. c. 19. Eng. every person duly impannelled and summoned to serve upon any jury, for the trial of any cause to be tried in any court of record within any city or corporate town in England, who shall not appear and serve on such jury, (after being called 3 times, and on proof on oath of the person so making default having been duly summoned) shall forfeit such sum not exceeding 40s. nor less than 20s. as the judge of the court wherein such default is made shall impose; unless some just cause for such defaulter's absence be made appear by oath or affidavit to the satisfaction of the judge. And by s. 2. if any person on whom any fine is imposed in pursuance of this act, refuse

refuse to pay the same to the person authorized by the judge to receive the same, it shall be lawful for the judge by warrant under hand and seal, to cause such fine to be levied by distress and sale, &c. And by s. 3. every fine imposed in pursuance of this act, shall be paid by the person who receives or levies the same to the proper officer of such city, &c.; to be applied to such uses as issues set on jurors, or other fines set in courts within such city, &c. are applicable by charter, prescription, or usage. And by s. 4. if any action be brought for any thing done in pursuance of this act, such suit shall be brought within 6 calendar months next after the matter complained of is committed; and the defendant may plead the general issue, &c.; and shall recover double costs of nonsuit, discontinuance, verdict, or judgment upon demurrer. No statute corresponding or analogous to the 29 Geo. 2. c. 19. has been passed in Ireland. The jurisdiction of inferior courts in general is further aided by the 19 Geo. 3. c. 70. s. 4. Eng. which provides, that where final judgment shall be obtained in any action or suit in any inferior court of record, it shall be lawful for any of his majesty's [*courts of record at Westminster] upon affidavit made and filed therein of such judgment being obtained, and of diligent search and inquiry having been made after the defendant, or his effects, and of execution having issued against his person or effects, and that the person or effects of such defendant are not to be found within the jurisdiction of such inferior court, (which affidavit may be made before a judge, or commissioner authorized to take affidavits,) to cause the record of said judgment to be removed into such superior court, to issue writs of execution thereupon to the sheriff of any county, city, &c. against the person or effects of such defendant, in the same manner as upon judgments obtained in the said courts [at Westminster]; and the sheriff, upon every such execution, shall detain the defendant until the 20s. be paid to him, or levy the same out of the effects, according to the nature of the execution, for the extraordinary costs of the plaintiff in the inferior court subsequent to the said judgment, and of the execution in the superior court, over and

Penalty how levied.

s. 3.

And applied.

s. 4.

*Limitation.**Pleading.**Costs.*

19 Geo. 3. c. 70.

s. 4. Eng.

Jurisdiction of inferior courts aided by superior.

* "Four courts at Dublin" in 19 & 20 Geo. 3. c. 38. Ir.

19 & 20 Geo. 3.
c. 38. s. 5 Ir.
26 Geo. 3. c. 38.
Eng.

Term of imprisonment for small debts, limited.

s. 2.

In cases of fraud enlarged.

s. 3.

No fees to gaoler.

Penalty.

s. 4.

How recovered.

and above the money for which such execution shall be issued. The 19 & 20 Geo. 3. c. 38. Ir. contains a similar provision. The 26 Geo. 3. c. 38. Eng. is also a statute of a general nature, which provides, (s. 1.) that no person, being a debtor or defendant, who shall be committed to any gaol by order of any court, or commissioners authorized by any act of parliament for constituting or regulating any court for the recovery of small debts, where the debt does not exceed 20s. shall be kept in custody more than 20 days from the commitment to prison; and where the original debt does not amount to or exceed 40s, more than 40 days; and all gaolers are to discharge such persons accordingly. But by s. 2. in case upon the summons of any person for debt before the said court, information of any fraudulent concealment of money or goods shall be given, and it shall be proved to their satisfaction upon the oaths of 2 witnesses, (which oath the commissioners are empowered to administer) that such debtor has money or goods fraudulently concealed; in that case the court shall have power to enlarge the imprisonment, for debts under 20s. to any time not exceeding 30 days, and for debts under 40s. to any time not exceeding 60 days; which ground of further detention shall be specified in the commitment; and the depositions of the witnesses shall be entered in a book to be kept by the clerk to the court. By s. 3. at the expiration of the said times of imprisonment such persons shall be immediately discharged without paying any fees to the gaoler; and every gaoler demanding or receiving any fees upon the discharge of such person, or keeping him prisoner after the times limited, shall forfeit £5. And by s. 4. two justices of the peace where the offence shall be committed, may hear and determine any offence against this act, and shall, upon information or complaint, summon the party accused and also the witnesses on either side, and examine into the matter of fact; and upon due proof being made thereof by the oath of one witness, &c. give judgment for the penalty, and issue their warrant for levying the said £5 on the goods of the offender, and cause sale to be made thereof, in case they shall not be

be redeemed in 4 days, &c.; and, (where the goods cannot be found to answer the penalty) commit such offender to prison for 2 months, unless it be sooner paid. By s. 5. all forfeitures (the necessary charges for recovery being deducted) shall be divided, one moiety for the support and maintenance of the poor, &c. and the other moiety to the person who shall sue for the same. But by s. 6. no person shall be convicted unless complaint or information shall be made or exhibited within 2 calendar months, &c. By s. 7. it shall not be lawful for any such court to issue any process against the body of any person, where the party entitled to the judgment shall at the same time have obtained any warrant against the goods of the same person. By s. 8. no person shall be capable of acting as a commissioner in the execution of any of the acts constituting such courts, unless such person be a housholder within the county, &c. for which he shall act, and shall be possessed of a real estate of the annual value of £20, or of a personal estate of the value of £500: And if any person not so qualified shall act, he shall forfeit £20 to any person who will sue for the same, to be recovered with full costs, by action of debt, or on the case, wherein, &c.; and the person prosecuted shall prove that he is qualified, or otherwise pay the penalty, upon proof given of his having acted as a commissioner, provided such action be commenced within 6 calendar months, &c. and laid or brought in the county, &c. where the offence shall be committed. No Irish statute, of a general nature, has defined or limited the term of imprisonment under executions for small debts recovered in the inferior local jurisdictions of Ireland.

s. 5.

s. 6.

s. 7.

Process not to be against both body and goods.

s. 8.

*Qualification for commissioners.**Penalty.*

The 36 Geo. 3. c. 25. Ir. (as amended by the 38 Geo. 3. c. 25. Ir. and 39 Geo. 3. c. 16. Ir.) has provided "for the better and more convenient administration of justice and for the recovery of small debts in a summary way, at the sessions of peace of the several counties at large within this kingdom, except the county of Dublin:"*

Jurisdiction of assistant barristers at sessions of the peace in Ireland.

36 Geo. 3. c. 25.

Ir.

38 Geo. 3. c. 25.

Ir.

the 39 Geo. 3. c. 16.

Ir.

* The civil bill jurisdiction of the chairman of the county of Dublin is derived from the 2 Geo. 1. c. 11. (which was amended by the 8 Geo. 1. c. 6. 1 Geo. 2 c. 14. 19 & 20 Geo. 3. c. 26. and 31 Geo. 3. c. 31.) and is confirmed by this act s. 17. And this

Courts how divided.

Sessions when held.

Assistant barristers how appointed.

the outline of which provisions it appears sufficient to state. By the first of these acts the lord lieutenant of Ireland with the advice of the privy council, is empowered to divide each of the counties (except the county of Dublin) into two divisions for the purpose of hearing and determining civil bills; and to appoint one convenient town, or more, in each of said divisions, in which a civil bill court shall be held at some general session or quarter sessions of the peace, or some adjournment thereof; which sessions are by the 38 Geo. 3. c. 25. s. 1. Ir. directed to be held 8 times in every year, at particular seasons of the year hereby specially appointed; 4 of such sessions to be held in each division of the respective counties. And by the 36 Geo. 3. c. 25. s. 2. the lord lieutenant is further empowered to appoint a practising barrister at law, of 6 years standing at the least, or who shall have actually practised 6 years, and shall not have retired from practice in his majesty's courts of law at Dublin, to act as a constant assistant to the justices at every sessions of the peace, and adjournment thereof, for all such counties at large, (except the county of Dublin; and except such counties as were divided into districts, and for which assistant barristers were appointed in pursuance of the 27 Geo. 3. c. 40. Ir.): And every such barrister shall be *ipso facto* in the commission of the peace, and a justice of the peace for the county in which he shall be so appointed; and shall duly attend during the whole of every such sessions, and adjournment thereof, except such sessions, &c. as shall be held for the purpose of registering freeholders, or for any other purposes save the administration of justice in criminal cases, and the hearing causes by civil bill. And they are further empowered to make and renew decrees and dis-

this act extends the civil bill jurisdiction of the assistant barristers of the counties of Waterford, Cork, Limerick, and Kilkenny, to the cities of Waterford, Cork, Limerick, and Kilkenny, and also of the assistant barristers of the counties of Antrim, Galway, and Louth, to the towns of Carrickfergus, Galway, and Drogheda, (which are counties in themselves) respectively. The recorder of Dublin is invested with the civil bill jurisdiction by the 31 Geo. 2. c. 16. Ir. in cases arising within the liberties of this city: and by the 38 Geo. 3. c. 25. Ir. the civil bill court is directed to be held before the recorder 4 times a year, as nearly as may be at equal distances.

of

misses, (by s. 6.) and to issue execution against the body or goods of the party, with such power of administering oaths to witnesses, and others, and such powers for trying any controverted fact by jury, and under such regulations, provisions, directions, and remedies, for the enforcing the appearance of parties, and witnesses, and for punishing witnesses giving false testimony, and sheriffs and other officers neglecting their duty in the execution of the premises, and in all respects to exercise such jurisdiction and powers concerning the said English bill, as the judges of assize are empowered to exercise by the 2 Geo. 1. c. 11. Ir. 8 Geo. 1. c. 6. Ir. 1 Geo. 2. c. 14. Ir. and 31 Geo. 3. c. 31. Ir. or any other act, subject nevertheless to the restrictions and qualifications in this act expressed.

By s. 6. (as amended by the 38 Geo. 3. c. 25. s. 3. Ir. and 39 Geo. 3. c. 16. s. 3. Ir.) such assistant barristers are empowered to hear and determine in a summary way by English bill, or paper petition, usually called civil bill, all differences between party and party, for any sum not exceeding £20, in all actions of debt on any bond, bill, or specialty, for payment of money only; and in actions on the case on any promissory note, or inland bill of exchange: Or for any sum not exceeding £10 in all actions for debts for rent upon leases, articles, minutes, or contracts in writing; and in all actions on the case in *assumpsit* and *insimul computasset*; and in *trover* and *quantum meruit*; and in trespass for any injury done to the person or goods, (criminal conversation with the plaintiff's wife only excepted): And also all actions on the case (slander only excepted,) or detinue for goods or chattels detained, wherein the sum demanded in the process shall not exceed £5. But in actions or monitions issuing out of the ecclesiastical courts, such assistant barristers shall make decrees without any limitation on account of the sum therein contained. But by s. 8. no cause of action shall be split, so as to make the ground for two or more actions, in order to bring such cases within the jurisdiction created by this act. And it is provided, (s. 7.) that the title to lands be not drawn into question. And the defendant shall have such defence as if sued in the ordinary

Jurisdiction of judges of assize in civil bills, transferred to assistant barristers.

For what sums civil bills may be brought.

Decrees upon monitions may be for any sum.

Actions not to be split.

No question involving title to be tried by civil bill.

Nor suits for penalties.

Exceptions.

Assistant barristers have no jurisdiction in appeals from manor courts.

Sole judges of civil bills at sessions.

And may also act alone in other cases.

Civil bill court a court of record.

Perjury how punished.

forms of the common law, or in any court of equity. By s. 14. nothing in this act shall enable such assistant barristers to hear or determine any action brought for the recovery of any penalty given by any statute now in force, and which the judges of assize are empowered to hear, &c. by civil bill; save that it shall be lawful for such assistant barristers to make such decrees against witnesses, (residing within the county wherein they shall hear such causes, and duly summoned to give evidence) as the said judges are now empowered to do; and save that such assistant barristers may hear, &c. actions brought against sheriffs for the double value of sums deposited with them upon any appeals, in like manner as the judges, &c. And by s. 15. nothing herein shall enable such assistant barristers to hear any appeal from any manor court, but such appeals shall be determined by the judges of assize on their respective circuits. By s. 17. the assistant barristers shall be the sole and exclusive judges in such courts for hearing said causes in a summary way by civil bill, in like manner as the chairman of the county of Dublin now is; and the court of sessions, &c. may sit in the county of Dublin and other counties at large, and be competent to do all business, criminal or civil, which may be done at any session of the peace, when the said chairman or assistant barrister shall be present, although the said chairman or assistant barrister should be the only justice present; provided that such assistant barrister shall not (except in hearing causes on civil bills) act alone until after 12 o'clock at noon, and that nothing herein shall prevent any justices of the peace from acting at such sessions, &c. as if this act had not been made. And by s. 16. the court held by the assistant barrister, for hearing civil bills, shall be a court of record. And in case any person examined on oath or affirmation by virtue of this act, or in swearing or affirming in any affidavit or affirmation by this act required to be made, before any assistant barrister, shall commit wilful perjury, or falsely affirm, and be thereof duly convicted, such person shall be set in the pillory for one hour, and suffer such imprisonment, not exceeding 12 months, as the court before whom he shall be convicted shall direct. And by s. 46.

every

every such assistant barrister may, of his sole authority, fine the clerk of the peace, or his deputy, and all sheriffs of counties, counties of cities, and counties of towns, where such courts shall be held, and all attornies who shall be guilty of any breach of duty in the execution of this act, in any sum not exceeding £5; and also, at his discretion, fine, in any sum not exceeding 40s. or commit to prison for any time not exceeding a fortnight, any person who shall disturb the court so held for hearing causes in a summary way, or for any other contempt. And by s. 37. it shall be lawful for the assistant barrister, if any attorney shall appear to have acted in any such cause corruptly, contemptuously, or knowingly and willingly against his duty as an attorney, to make an order, (to remain with the clerk of the peace) either suspending such attorney from practising on civil bills for a given time, or prohibiting such attorney for ever from practising on civil bills in such county; provided, that such attorney may appeal to the judges of assize at the assizes to be holden next after such order, which judges may, by examination on oath, examine into the ground of such order, and reverse or vary the same.

*But power of
fining and im-
prisoning li-
mited.*

*Assistant barris-
ter's control of
attornies.*

This act prescribes the manner in which the process in such civil bill causes shall be served, as also the form of such process, and of decrees or dismisses thereon; and limits the several fees to be taken by the assistant barristers, and by the attornies, clerks of the peace, and sheriffs, for the execution of their respective duties in such cases: And provides, (s. 12.) that no defendant shall be liable to be sued by authority of this act, or obliged to appear in any cause to be heard in such summary way, at any session, &c. held out of the division in which he lives with his family, or usually resides; unless there shall be more than one defendant in such cause, in which case the plaintiff may bring his action in such division of the county where any one of the defendants shall so live or reside. But by s. 13. all witnesses may be compelled by process *ad testificandum*, to be signed by the clerk of the peace of the county in which any such court shall be held, (in like manner as they are now compellable by the seve-

*Forms of pro-
ceedings, and
amount of fees
regulated.*

*Parties to be
sued in the divi-
sion of the coun-
ty where they re-
side.*

*Witnesses not
compelled to give
evidence out of
proper county.*

Appeals from civil bill decrees to assizes.

Proceedings before assistant barristers not removeable by writ of error.

Decrees in force for a year; but may be renewed every 6 months.

But not after 6 years.

2 Geo. 1. c. 11. s. 9. Ir.

ral acts of parliament aforesaid) to give evidence on the trial of any civil bill, whether such witnesses shall reside in the same division of such county where such cause shall be heard or not; provided that no witness shall be compellable to give evidence out of the county in which he shall reside. But this act provides, (s. 29.) that any person aggrieved by any decree or dismiss made or pronounced by any assistant barrister, may appeal to the judges of assize for the respective county, at the next assizes, and not after; and such judges shall re-hear said cause, in the same manner as in cases of appeals from the decrees made by the judges of assize in such cases, and issue a decree and execution thereon, in like manner as upon the hearing of civil bills, and with like costs and fees. But the proceedings on such decrees, &c. shall not be stopped unless the party appealing shall pay to the adverse party his costs, or deposit the same with the clerk of the peace; and also secure, if a plaintiff, the costs of such appeal, and if a defendant, the sum decreed and costs, in such manner as is provided by s. 29, 30, & 31; nor unless an affidavit shall be made by the attorney, (or by the party himself in case he did not appear by attorney) that such appeal is not made for delay. But by s. 32. such decrees and dismisses made by assistant barristers shall, in case there shall be no appeal therefrom to the next going judge of assize, be final, and shall not be subject to be removed by any writ of error, or otherwise, to any other of his majesty's courts; and in case of an appeal from any such decree or dismiss to the next going judge of assize, the order or decree of such judge shall in like manner be final. By s. 24. every such decree and dismiss shall be in force for one year from the date thereof: But by s. 25. & 26. such decrees or dismisses may be renewed upon filing such affidavit as hereby prescribed. And by the 39 Geo. 3. c. 16. s. 5. Ir. such decrees or dismisses may be renewed once in every 6 months, or as near thereto as the times for holding the sessions will admit. But by the 36 Geo. 3. c. 25. s. 27. no decree or dismiss shall be renewed after 6 years from the time of making or pronouncing the same. By the 2 Geo. 1. c. 11. s. 9. Ir. if any

sheriff

sheriff shall suffer any person taken in execution by virtue of any such decree or dismiss to make his escape, he shall be liable to the payment of the debt and damages in such decree, to be recovered before the judges of assize as herein mentioned. And by the 31 Geo. 3. c. 31. s. 3. Sheriff liable on escape. Ir. no cattle or goods taken in execution under any such decree, shall be driven or carried to any place more than 5 miles distant from the place where they were taken; and such cattle, &c. shall be sold by public sale between the hours of 10 in the forenoon and 12 in the afternoon on such day, and at such place, as the sheriff or his bailiff shall appoint; first causing notice in writing, intituled in the cause, of the time and place intended for such sale, to be posted up 4 days previous thereto, in the next market town, at the usual place of posting up public notices; or the plaintiff, or person driving, carrying, or selling otherwise than as herein directed, shall forfeit to the person aggrieved double the value of the said cattle, to be recovered by civil bill. And by s. 4. if any cattle or goods shall be carried away under colour of any such decree, between the hours of sunset and sunrise, the person so carrying away the same shall be guilty of a misdemeanor, and suffer such punishment by imprisonment, whipping, or otherwise, as to the judge shall seem meet; and in any indictment for this offence it shall be sufficient to allege generally that the party fraudulently, and contrary to this act, carried away such cattle or goods between the hours of sun-setting and sun-rising: and the property of the cattle, &c. so taken, shall not be altered by any sale thereof. Execution against goods here executed. Penalties for undue execution.

For the more speedy and easy recovery of small debts in the manor courts of Ireland, and for regulating the costs of proceedings therein, the 25 Geo. 3. c. 44. Ir. Proceeding in manor courts regulated. provides, that it shall be lawful for the seneschals and stewards of manors within this kingdom, (*except in the county of Dublin, or county of the city of Dublin) in all cases of debt, *assumpsit* and *in simul computassent*, not

* This exception seems to be with reference to the manor courts of St. Sepulchre, Thomas-court, and Donore, which have jurisdiction of causes to any amount, and which are expressly recognized by several acts of parliament.

exceeding

*Process for what
sums, and in
what form.*

s. 2.

*Power to sum-
mon juries.*

s. 3.

*Decree and
execution.*

*Exception as to
executions
against the body.*

s. 4.

exceeding £10; and in cases of *quantum meruit*, trover, trespass, or detinue, not exceeding £5; and within the sum to which the jurisdiction of said courts is limited by their respective grants or charters, and where the cause of action shall arise within the jurisdiction of such courts, upon application to issue a summons or process in the name of such seneschal or steward, returnable to the next court to be held within such manor; provided that there be 7 days between the day of such service and such court day; which summons, &c. shall express the names of the parties, the cause of action, and the day and place of appearance. And by s. 2. it shall be lawful for such seneschals, &c. to summon juries of their respective manors, and with like powers to enforce their attendance as they now have by law. By s. 3. it shall be lawful for such seneschals, &c. after proof upon oath before them of the service of such summons at the defendant's usual place of abode, the same being within such manor, without any formal pleadings, or other proceedings, than such as are directed with respect to civil bills, to determine the matter complained of, upon examination of witnesses, in open court, before said seneschal, &c. and jury, and make a decree upon the verdict, and issue execution thereon returnable on the next court day, for the sum found by such verdict, with 5s. 11½d. costs; such execution to be directed to the bailiff or marshal of such manor, against either body or goods of the defendant, at the election of the party, in the same manner as judges of assize are to award execution upon civil bills; which such bailiff, &c. shall execute, as executions or other judicial process issuing out of such manor courts are now executed; and if the plaintiff shall not proceed upon such summons, &c. or shall be dismissed upon the hearing of such cause, or if a verdict shall be for the defendant, such seneschal, &c. shall award 5s. 11½d. and no more, as costs, and issue execution for the same as before directed; provided that no execution shall issue against the body of either plaintiff or defendant, unless such court shall be authorized by charter to issue the same. By s. 4. such seneschals, &c. shall at the desire of either party,
issue

issue compulsory summonses or process, directed to any person residing within such manor, to appear at any court within such manor, and testify concerning any matter or cause depending therein; and every such inhabitant who shall be duly served with such summons, &c. 3 days before the trial, shall be obliged to appear and give testimony, on being paid or tendered 1s. 1d. for his expenses, or forfeit any sum not exceeding 20s. which such seneschal, &c. shall think fit, to the party; and it shall be lawful for such seneschal to issue execution for the same. But by s. 5. it shall be lawful for any person, before the next county day, to appeal from any such decree to the next going judge of assize, who shall re-hear the cause, and issue a decree and execution thereon, as in cases of civil bills; and every such seneschal, &c. shall stop proceedings on such decree, upon the party appealing entering into a bond to the party obtaining the decree, with sufficient security in double the sum decreed, conditioned to pay the said sum, with lawful interest, and also double costs in case such appeal shall not be proceeded upon, or in case the said decree shall be affirmed. By s. 6. such causes shall not be removed into any superior court of record, but the determination of such seneschal, &c. or of the judge of assize upon such appeal, shall be final; provided that in any such action, the title of lands shall not be drawn into question; and that in all such proceedings the defendant shall have the benefit of all matters in his defence, as if sued in the ordinary forms of the common law, or in any court of equity. By s. 7. where an execution shall not be executed, the party suing out the same may on return thereof obtain a renewal: Provided, (s. 8.) that no such renewal shall be granted by any seneschal, &c. unless it shall appear to such seneschal, &c. on oath, that the party applying had used legal and necessary diligence in order to have such former execution executed; and in case any seneschal, &c. shall grant a renewal without such proof, he shall forfeit £10. to be recovered by civil bill. By s. 9. the fees limited are—to the seneschal for issuing his summons, and signing the same, 1s. 1d.; to the attorney for entering the plaint, and attending

Compulsory process against witnesses.

s. 5.

Appeal to judges of assize.

s. 6.

Causes not removable to superior Courts.

Title to lands not to be drawn into question.

s. 7.

Renewal of executions.

s. 8.

s. 9.

Fees of officers.

tending the hearing of the cause, 2s. 2d.; to the seneschal for entering the plaint, 1s. 1d.; and for every execution made out and signed, 2s. 8½d.; for the bond and bail taken upon an appeal, 1s. 1d.; to the bailiff or marshal for summoning a jury, 1s. 1d.; and to the bailiff, &c. 6½d. for the first, and 3d. for every pound after, which he shall levy under any execution.

Nothing herein to abridge former jurisdiction.

s. 9.

But it is provided, (s. 9.) that nothing herein shall abridge the jurisdiction of any manor court having jurisdiction to hold plea for greater sums than herein before mentioned; or to restrain such court from proceeding in causes exceeding such sums, according to the ordinary rules of law. By s. 10. such courts shall be held at the

s. 10.

Courts to be held as directed by patents.

Seneschals to administer oaths.

times, and in manner, directed by the several patents under which they are held; and such seneschals are hereby empowered to administer oaths to witnesses, and also such oaths as are hereby appointed; and any person so examined on oath shall suffer the punishment of wilful perjury, if thereof convicted according to law. By s. 11.

s. 11.

Bailiffs to give security.

every such bailiff or marshal shall enter into security, with 2 sufficient sureties, in the sum of £50. to the seneschal, conditioned for the faithful discharge of his office; and if such bailiff shall wilfully neglect or delay the execution of any such decree, or having levied the

* "Bailiff" in the act.

same shall refuse or decline to pay the [plaintiff*] the amount thereof, said bailiff and his sureties shall be liable to the debt and damages in such decree or execution,

s. 12.

Seneschal to keep a court book, and give duplicates to the clerk of the peace.

to be recovered by civil bill. By s. 12. every such seneschal shall keep a court book, in which he shall make a regular entry of every cause proceeded on, and of the plaintiff's and defendant's names, the witnesses that shall be sworn to give evidence, and the amount of the sum that shall be pronounced due; a duplicate whereof he shall deliver at every sessions, to the clerk of the peace of the county, to be kept as a record; and in case any seneschal shall offend herein, he shall forfeit £10. to be recovered by civil bill, by any person who shall sue for the same. By s. 13. no proceeding in said manor courts

s. 13.

Proceedings exempt from stamp duty.

in pursuance of this act, shall be chargeable with any stamp duty.

CHAP. VI.

Of the Cognizance of Private Wrongs.

§ 1

A remedy for the subtraction of tithes was first provided by the 27 Hen. 8. c. 20. Eng. which enacts that every subject of this realm, according to the ecclesiastical laws and ordinances of the church of England, and after the laudable usages and customs of the parish or other place where he dwelleth or occupieth, shall pay his tithes, offerings, and other duties of holy church; and for subtraction of any of the said tithes, &c. the parson, vicar, curate, or other party aggrieved, may by process of the king's ecclesiastical laws of the church of England, convent the person offending before his ordinary or other competent judge, having authority to hear and determine the right of tithes, and compel the person offending to yield said duties. And in case the ordinary, or his commissary, or the archdeacon or his official, or any other competent judge, for any contempt, or other misdemeanor of the defendant, make information and request to any of the king's most honourable council, or to the justices of peace of the shire where such offender dwelleth, to assist the ordinary or judge to order or reform such person in any cause before rehearsed; the king's said council, or such 2 justices (whereof one to be of the *quorum*) to whom such information, &c. shall be made, shall have power to cause to be attached the person against whom such information shall be made, and to commit the same person to ward till he shall have found surety before any the king's counsellor, or justice of the peace, to the use of the king, to give due obedience to the process, decrees, and sentences, of the ecclesiastical court wherein such suit shall depend; and the king's said counsellors, or 2 justices, &c. shall have power

Tithes to be paid according to the custom of the parish.

27 Hen. 8. c. 20. s. 1. Eng.

Jurisdiction of ordinary.

Jurisdiction of justices of peace, &c.

- s. 3.
Proviso. power to take and record such recognizances, and obligations*. Provided (s. 3.) that every party to any such suit may have his lawful action, demand, or prosecution, appeals, prohibitions, and other lawful defences and remedies in every such suit, according to the said ecclesiastical laws, and the laws and statutes of the realm. And
- s. 4.
Proviso. provided (s. 4.) that this act shall take effect, until the king, and such other 32 persons which his highness shall appoint, shall make and ratify laws, to be called the ecclesiastical laws of the church of England. And by the
- 32 Hen. 8. c. 7. s. 2. Eng. 32 Hen. 8. c. 7. Eng. all persons of this realm shall truly set out or pay all tithes and offerings, according to the customs and usages of the places where such tithes or duties shall grow; and in case any persons withhold any tithes, &c. the person, ecclesiastical or lay, having cause to demand the said tithes, &c. may convent the persons offending before the ordinary, his commissary, or other competent judge, according to the ecclesiastical laws; and the ordinary, &c. having the parties, or their lawful procurators, before him, shall proceed to the hearing and determination of such matter, ordinarily or summarily, according to the course of the ecclesiastical laws.
- s. 3. And by s. 3. in case any of the parties appeal from the sentence of the ordinary, &c. the judge shall adjudge to the other party reasonable costs, and shall compel the party appellant to pay the same by compulsory process and censures of the laws ecclesiastical, taking surety of the other party to restore the costs, if the principal cause be adjudged against him; and so every ordinary, or judge ecclesiastical, shall adjudge costs to the other party upon every appeal in any suit of subtraction or detention of tithes, or in any other suit concerning the duty of such tithes or offerings.
- s. 4. By s. 4. if any persons after sentence definitive given against them, obstinately and wilfully refuse to pay their tithes, &c. or such sums of money wherein they be condemned for the same, 2 justices of peace of the shire, (whereof one of the *quorum*) shall have authority, upon information, certificate,
- Lay persons as well as ecclesiastical may convent before the ordinary, &c. persons subtracting tithes.*
- Appellant shall pay costs of suit to the other party.*
- The offender shall be bound by 2 justices to obey the ordinary's sentence.*

* This act (s. 2.) excepts the inhabitants of London.

or complaint, made in writing by the ecclesiastical judge that gave the sentence, to cause the party refusing to be attached and committed to the next gaol, till he have found sureties to the use of the king to perform the sentence. Provided (s. 5.) that no person shall be sued or compelled to pay tithes for any lands, &c. which are not chargeable with such tithes*. By the 2 & 3 Edw. 6. c. 13.

s. 5.

Proviso.

Eng. (which confirms the 27 Hen. 8. c. 20 and 32 Hen. 8. c. 7. *supra*) every of the king's subjects shall truly, 2 & 3 Edw. 6. c. 13. s. 1. Eng.

without fraud, set out and pay all manner of their predial tithes, in kind, as have been of right paid within In what manner tithes ought to be paid.

40 years before this act, or of right or custom ought to have been paid; and no person shall carry away any such or like tithes, in the places titheable, before he hath justly set forth for the tithe the tenth part of the same, or otherwise agreed for the tithes with the parson, vicars, or other owner or farmer of the tithes, under pain of treble value of the tithes. And by s. 2. whensoever the

s. 2.

said predial tithes shall be due, it shall be lawful to every party, to whom the tithes ought to be paid, or his deputy or servant, to see their tithes truly set forth, and the same quietly to carry away; and if any person carry Penalty for carrying away corn, &c. before tithe be set forth.

away his corn or hay, or other predial tithes, before the tithe be set forth; or willingly withdraw his tithes of the same, or of such other things whereof predial tithes ought to be paid; or do stop the parson, vicar, owner, or their farmers, to view and carry away their tithes, by reason whereof the tithe is lost or impaired; upon proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, or stopping, shall pay the double value of the tithe so carried away, withdrawn, or lost, besides costs; the same to be recovered before the ecclesiastical judge, according to the king's ecclesiastical laws. By s. 3. every person which shall have

s. 3.

any beasts or cattle titheable, depasturing in any waste or common ground whereof the parish is not certainly Tithe of cattle feeding in a waste where parish not known, how paid.

cattle to the parson, vicar, owner, (or their farmers) of the

* This act (s. 6.) also excepts the inhabitants of London.

- parish or place where the owner of said cattle inhabiteth. Provided (s. 4.) that no person shall be sued or compelled to pay tithes for any lands, &c. which by the laws of this realm, or by any privilege or prescription, are not chargeable with such tithes, or that be discharged by any composition real. And
- s. 4.*
Proviso.
- by s. 9. if any person refuse to pay his personal tithes, (which by s. 7 & 8 are required to be paid as already stated, v. 1. p. 438.) it shall be lawful for the ordinary of the diocess where the party is dwelling, to call the party before him and examine him by all lawful means, other than the party's own oath, concerning the payment of the said personal tithes. And by s. 10. all persons, which by the laws of this realm ought to pay their offerings, shall yearly pay their offerings to the parson, vicar, proprietor, (or their deputies or farmers,) of the parishes where they dwell; and that at such 4 offering days as heretofore within 4 years hath been accustomed, and in default thereof pay for their said offerings at Easter following. And by s. 13. if any person do subtract any manner of tithes, or other duties before mentioned, or any part of them, he shall be sued in the king's ecclesiastical court; and it shall not be lawful to the parson, vicar, owner, or their farmers, to sue such withholder of tithes, &c. before any other judge than ecclesiastical: And if any archbishop, bishop, chancellor, or other judge ecclesiastical, give any sentence in the aforesaid causes, and (no appeal nor prohibition hanging) the party condemned do not obey the sentence, it shall be lawful to such judge ecclesiastical to excommunicate the party disobeying; in which sentence of excommunication if the party wilfully endure 40 days, upon publication thereof in the parish church where the party is most abiding, such judge may signify to the king in chancery the condition of the said party so excommunicate, and thereupon require process *de excommunicato capiendo*. And by s. 14. if the party in such case shall sue for a prohibition in the king's court, he shall, before any prohibition be granted, deliver to some of the judges of the court, the copy of the libel in the ecclesiastical court,
- The ordinary may examine him that refuseth tithes.*
- s. 9.*
- s. 10.*
Offerings when paid.
- s. 13.*
Suits for withholding of tithes shall be in the ecclesiastical courts.
- s. 14.*
A copy of the libel shall be delivered to the judges before a prohibition granted.

court, subscribed with the hand of such party ; and under the copy of the libel shall be written the suggestion, whereof the party demandeth the prohibition ; and in case the suggestion, by 2 sufficient witnesses, be not proved true in the court where the said prohibition shall be granted, within 6 months after the said prohibition, the party hindered by such prohibition shall upon his request have a consultation, and shall also recover double costs and damages, to be assessed by the court where the consultation shall be so granted, and to be recovered by action of debt, &c. in any court of record. Provided (s. 15.) that this act shall not give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter contrary to the statute of Westm. 2. c. 5. the statutes of *articuli cleri*, *circumspecte agatis*, *sylva cædua*, the treatise *de regia prohibitione*, nor against the [1* Edw. 3. st. 2. c. 11.] ; nor to hold plea in any matter whereof the king's court ought to have jurisdiction.

A consultation granted if suggestion not proved.

s. 15.

Of what things a judge ecclesiastical shall not hold plea.

There is no statute in Ireland corresponding to the 2 & 3 Edw. 6. c. 13. Eng. or to the 27 Hen. 8. c. 20. Eng. But the 33 Hen. 8. st. 1. c. 12. Ir. which contained provisions similar to the 32 Hen. 8. c. 7. s. 1, 3, 4, & 5. Eng. *ante* is explained and amended by the 7 Geo. 3. c. 21. Ir. which enacts (s. 1.) that every owner of corn, hay, or peas or beans, (except peas or beans which grow in gardens) shall, before he shall remove the said corn, &c. give notice in writing to the persons entitled to receive such tithes, or his known proctor or manager, of the time of setting out such tithes, 48 hours at least before setting out the same ; which notice shall be delivered to the person entitled to receive such tithes, or his known proctor or manager, or, in case neither of them can be found at his house or usual place of abode within said parish, such notice shall be given to some person living in such house, who is above the age of 16 years ; and all persons who give such notice shall without fraud, covin, or wilful delay, truly and effectually divide, set out, and deliver such tithes to the persons entitled to receive the same, who shall attend for the purpose pursuant to such

Owner of corn &c. to give 48 hours notice of setting out tithes.

33 Hen. 8. st. 1. c. 12. Ir.
7 Geo 3. c. 21. s. 1. Ir.

* This is erroneously referred to as the 1 Edw. 3. st. 2. c. 10.

Persons receiving tithes may make the same in stacks on the field, &c.

s. 2.

On non-residence of persons entitled, &c. notice on church door substituted.

s. 3.

In suit for subtraction of predial tithes what evidence sufficient.

35 Geo. 3. c. 32. s. 1. Ir.

Title of incumbent, &c. not controverted unless plea be verified upon oath.

7 Geo. 3. c. 21. s. 4. Ir.

Petition to be lodged before citation.

notice : And it shall be lawful for the persons receiving such tithes to make the same in stacks, or otherwise, on the field where the same grew, and where the same may remain so long as the rest of the corn, &c. shall remain on the said field undrawn by the owner. Provided (s. 2.) that if the person entitled to receive the said tithes, or his proctor, &c. have no residence in said parish, (or in one of the parishes united by virtue of any union) then it shall be sufficient to give notice of the time of setting out the tithes, by affixing the same on the door of the parish church, 48 hours before the setting out said tithes ; to remain from 10 o'clock in the forenoon 'till 1 o'clock in the afternoon of the day it shall be so affixed. And by s. 3. it shall be sufficient for every ecclesiastical person, or lay impropriator, in any suit for the subtraction of predial tithes, to prove that such person was and is reputed to be incumbent or impropriator of such parish, and had acted as such at or before the time the right of the tithes sued for accrued, without producing any other title ; except the title of the person promoting such suit shall be controverted, and it shall be pleaded by the party so sued, that the party prosecuting is not the legal incumbent or impropriator. But by the 35 Geo. 3. c. 32. s. 1. Ir. the title of the incumbent or impropriator shall not be considered as controverted, unless the plea denying the title of the promovent shall be verified upon oath or affirmation of the person putting in said plea, to the best of his knowledge or belief ; which oath, &c. the ecclesiastical judge shall administer. By the 7 Geo. 3. c. 21. s. 4. Ir. before any citation shall issue under the seal of any ecclesiastical court in any cause for subtraction of predial tithes, a petition or complaint in writing shall be lodged in the registry of such court, in which shall be inserted all the tithes then due to the person at whose instance such citation shall be issued, by the person so to be cited ; so as that no second suit shall be commenced against the same person for any such predial tithes which shall have become due before that time ; and a copy of such petition, &c. attested by the register of such court, shall be served upon the party so to be cited along with the copy of such citation ; which
citation

citation shall also contain an intimation to the party, that whether he shall appear at the time and place appointed thereby, or shall contumaciously absent himself, the judge of said court will proceed in a summary way to hear and finally determine such cause upon the day assigned by such citation. Provided that the time assigned for the appearance of the party shall not be sooner than 30 days after the date of such citation; and that the same shall be served, together with such copy of such petition, within 3 days after the date of such citation, in such manner as citations are usually served in other cases in said courts; and upon the return of such citation and intimation, and due proof made of the service thereof, with such copy of such petition, &c. by oath in writing on the back of such citation, or annexed thereto, sworn before the judge of the court from whence the same issued, it shall be lawful for the judge thereon to proceed, in a summary way, to hear such cause by examination of witnesses *viva voce*, and such other legal proofs as shall be offered on behalf of either of the parties, and to give final sentences either in presence of the party so cited, &c. or his proctor, if he shall appear, or in pain of his contumacy, in case he shall absent himself, and to adjudge costs to the party who shall prevail in such suit not exceeding £1. 6s. 8d. And by s. 5. it shall be lawful to exhibit such petition, &c. without the subscription of an advocate or proctor; and no exception shall be admitted to any such petition, &c. for any defect in form; and either of the parties may appear in such causes without any proctor; and the respective judges and registers shall receive such appearances, and such proofs as shall be offered, and finally determine such causes in the most summary manner without any regard to the formality of the proceedings, and regarding only the justice of the case: And such judges or registers shall not receive any fees from either of the parties in such suits for predial tithes; but in lieu of such fees, it shall be lawful for the ordinaries of every diocess to grant such sum out of their proxies due to them, at their annual visitation, to the judge and register, as they shall think reasonable. Provided (s. 7.) that all persons

Citation what to contain.

Proceeding thereon.

s. 5.

Subscription of advocate, &c. and other forms dispensed with.

s. 7.

may

*Appeals from
ecclesiastical
court as before.*

s. 6.

*On refusal to
pay 15 days
after service of
monition, the
money decreed
sued for by civil
bill.*

* *Vide page 65.*

s. 8.

*Defendant to
civil bill may
give in evidence
matter subse-
quent to sen-
tence.*

s. 9.

*And examine
plaintiff or pro-
tor.*

s. 10.

Proviso.

35 Geo. 3. c. 32.
s. 2. Ir.

may appeal from such sentences in such ecclesiastical courts, upon such terms, and in such manner, as they might have done since the 33 Hen. 8. st. 1. c. 12. Ir. And by s. 6. no attachment or committal shall be made by justices of the peace pursuant to the 33 Hen. 8. st. 1. c. 12. Ir.; but where any person condemned in any sum of money for predial tithes, or costs of suit, shall refuse or neglect, after service of a monition from the court where such sentence shall be given, and proof made upon oath of the due service thereof, by the space of 15 days after such service, to pay such sum as shall be so decreed, it shall be lawful for the party obtaining such sentence, his executors or administrators, to sue for the money so decreed by civil bill, to be brought in the county where the party against whom such sentence was pronounced shall reside, [*so as the same do not exceed £.20]; and a true copy of such monition, under the seal of the court from whence the same issued, and proof upon oath of the due service thereof 15 days before the hearing of such civil bill, shall be conclusive evidence of the sum due; and the party obtaining a decree in such suit shall be entitled to execution, process, and usual costs of civil bills. Provided (s. 8.) that if it shall appear that the matter is of ecclesiastical cognizance, any defendant sued by civil bill under this act may give in evidence any matter subsequent to the sentence in the ecclesiastical court, which may be sufficient, in law or equity, to discharge him of the whole or any part of the sum decreed against him by said sentence. And by s. 9. the said court shall be a court of equity to the defendant, so as to enable him to examine the plaintiff, or his proctor, &c. upon oath, upon giving reasonable notice to the plaintiff or his proctor, that such attendance is required at the hearing of such civil bill. And provided (s. 10.) that nothing herein shall give or confirm a right in the incumbent to any species of tithes to which he is not already entitled.† By the 35 Geo. 3. c. 32. s. 2. Ir. all persons

† This act (s. 16.) provides that no proctor in the spiritual courts in any diocese shall be a tithe farmer, or take any tithes, except of such lands of which he is proprietor or occupier.

who shall sue for predial tithes, whether they be ecclesiastical or lay persons, and whether they sue in their own right, or by titles derived from others, or for the use of others, may proceed in such suit in the manner prescribed by the 7 Geo. 3. c. 21. *supra*.

All persons suing for predial tithes, to proceed as by 7 Geo. 3. c. 21.

By the 7 & 8 W. 3. c. 34. s. 4. Eng. as amended by the 1 Geo. 1. st. 2. c. 6. s. 2. Eng. where any quaker shall refuse to pay or compound for his great or small tithes, or to pay any church rates, or any customary or other rights, dues, or payments, belonging to any church or chapel, any 2 justices of peace, of the same county or place, (other than such justice as is patron of such church, &c. or any ways interested in the said tithes) upon complaint of any parson, vicar, [*curate, farmer, or proprietor of tithes, church-warden or chapel-warden,] or other person who ought to have, receive, or collect the same, shall summon in writing by warrant under their hands and seals, by reasonable warning, such quaker, and after his appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, examine upon oath, [†or in such manner as by this act is provided, *viz.* upon affirmation] the truth of said complaint, and ascertain what is due by such quaker to the party complaining, and by order under their hands and seals direct the payment thereof, so as the sum ordered do not exceed £10.; [‡and such costs as shall be reasonable, not exceeding 10s.] and [‡any one of said justices] may, by his warrant, levy such money by distress,§ &c. and any person aggrieved may appeal to the [||next quarter sessions;] and if the justices shall continue the said first judgment, they shall give reasonable costs against the appellant, to be levied by distress, &c.: [¶and no proceedings had by virtue of this act shall be removed by *certiorari*, or other writ, unless the title of such tithes shall be in question.] Provided (s. 5.) that

Proceeding to recover tithes from quakers.

7 & 8 W. 3. c. 34. s. 4. Eng.

1 Geo. 1. st. 2. c. 6. s. 2. Eng.

* "Rector, vicar, farmer, or proprietor of tithes," in 7 Geo. 3. c. 21. Ir.

† not in 7 Geo. 3. c. 21.

‡ "said justices," in 7 Geo. 3. c. 21. Ir.

|| "next going judges of assize" in 7 Geo. 3. c. 21. Ir.

*

in

§ The 7 Geo. 3. c. 21. Ir. here adds "such distress, if not redeemed, to be sold by public cant at the next market town, the person distraining first causing notice in writing to be posted up 4 days previous to such sale."

¶ This clause is not in 7 Geo. 3. c. 21. Ir. but this act provides, that nothing herein shall give any remedy to any rector, vicar, or proprietor of tithes, for the recovery of any tithes to which he is not entitled by law or custom.

in case any appeal be made, no warrant of distress shall be granted until after such appeal be determined. The

7 Geo. 3. c. 21.
s. 11. 12 & 13. Ir.

7 Geo. 3. c. 21. s. 11. 12 & 13. Ir. has followed these statutes with such deviation as is noted in the margin.

Small tithes not exceeding 40s. how recovered.

7 & 8 W. 3. c. 6.
s. 1. Eng.

* "and other ecclesiastical dues," in
1 Geo. 2. c. 12.
Ir.

s. 2.

Summary proceeding of justices.

† "by giving 4 days notice" in
1 Geo. 2. c. 12.
Ir.

s. 3.

Adjudication enforced by distress and sale.

For the more easy recovery of small tithes, where the same do not amount to above the yearly value of 40s. from any one person; the 7 & 8 W. 3. c. 6. s. 1. Eng. provides, that every person shall truly set out and pay all small tithes and compositions for the same, with all offerings, [*oblations, and obventions,] to the rectors, vicars, and other persons, to whom they shall be due, according to the rights, customs, and prescriptions, used within the several parishes; and if any person shall subtract, or fail in the payment of such small tithes, &c. 20 days after demand, the persons to whom the same shall be due, may make their complaint in writing unto 2 justices of peace within the county, &c. where the same shall grow due; [†neither of which justices is to be patron of the church or chapel whence the tithes arise, nor interested in such tithes, &c.] And by s. 2. said justices shall summon in writing under their hands and seals, [†by reasonable warning,] every person against whom such complaint shall be made; and after his appearance, or upon default of appearance, the said summons being proved upon oath, the justices, or any 2 of them, shall hear the complaint, and upon the proofs, shall, in writing, &c. adjudge the case, and give such compensation for such tithes, &c. as they shall judge reasonable, and also costs not exceeding 10s. By s. 3. if any person shall neglect, by 10 days after notice, to pay any such sum as shall be so adjudged, the constables and church-wardens of the parish, or one of them, shall, by warrant of the said justices, distrain the goods of the party, and, after detaining them 3 days, in case the sum adjudged, together with reasonable charges, be not paid, shall make public sale of the same

† Instead of the words within these crotchets, the 1 Geo. 2. c. 12. s. 2. Ir. provides, that no such justice shall be qualified, who shall not have a freehold estate of the yearly value of £100. (except in counties of cities and counties of towns) and who shall not be resident in the county, &c. where the tithes, &c. shall arise, or who shall be patron of the church or chapel in right of which the tithes, &c. are demanded, or who shall be any ways interested in such tithes, &c. or who shall be a clergyman in holy orders.

same, &c. By s. 10. if any person against whom judgment shall be had, shall remove out of the county, &c. after judgment, and before the levying of the sum, the justices who made the judgment, or one of them, shall certify the same, under hand and seal, to any justice of peace of such other county wherein the person shall be inhabitant; which justice shall, by warrant directed to the constables or church-wardens of the place, or one of them, levy the sum adjudged upon the goods of such person. By s. 4. it shall be lawful for all justices of peace, in the examination of all matters offered to them by this act, to administer an oath to any witness. And by s. 12. they shall have power to give costs not exceeding 10s. to the party prosecuted, if they find the complaint false and vexatious; which costs shall be levied in manner aforesaid. By s. 6. no complaint concerning any small tithes, &c. shall be determined by justices of peace, unless the complaint be made within 2 years after the same tithes, &c. become due. And by s. 8. where any person complained of for subtracting small tithes, &c. shall before the justices insist upon any prescription, composition or *modus*, agreement, or title, and deliver the same to the justices subscribed by him, and shall then give to the party complaining security, to the satisfaction of the justices, to pay all such costs and damages as upon a trial at law shall be given against him, in case the said prescription, &c. shall not be allowed; the justices shall forbear to give judgment in the matter, and the persons complaining shall be at liberty to prosecute such persons for their subtraction in any other court. By s. 9. every person who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained, before any justice of peace out of sessions, shall cause the same to be inrolled at the next quarter sessions; and the clerk of the peace shall upon tender thereof, inroll the same: and shall not ask for the inrolment of any such judgment any fee exceeding 1s.; and the judgment so inrolled, and satisfaction of the sum adjudged, shall be a bar to any other remedy for the said small tithes, &c. But it is provided

s. 10.

Remedy where persons remove out of county, &c. after judgment.

s. 4.

Justices to administer an oath.

s. 12.

Justices may give 10s. costs.

s. 6.

No complaint to be heard unless made within 2 years.

s. 8.

Persons complained of insisting on composition, how justices are to proceed.

s. 9.

Judgment to be inrolled at the next sessions by the clerk of the peace.

- s. 7. (s. 7.) that any person aggrieved by any judgment given by 2 justices, may appeal to the next quarter sessions; and if the justices then present confirm the judgment, they shall give costs against the appellant, to be levied by distress and sale of goods; and no proceedings by virtue of this act shall be removed or superseded by *certiorari*, or other writ, unless the title of such tithes, &c. be in question. By s. 13. if any person be sued for any thing done in execution of this act, and the plaintiff shall discontinue, or be nonsuit, or a verdict pass against him, such person shall recover double costs. By s. 14. any person who shall begin any suit for recovery of small tithes, &c. not exceeding 40s. in his Majesty's Court of Exchequer, or in any ecclesiastical court, shall have no benefit by this act. [*And by s. 5. this act shall not extend to tithes, &c. within London, nor to any other city or town corporate where the same are settled by act of parliament.] The 1 Geo. 2. c. 12. Ir. as amended by the 36 Geo. 3. c. 32. s. 2. Ir. has followed this statute with such deviations as are noted in the margin.
- Proceedings upon appeals.*
- Double costs of nonsuit, &c.*
- Proviso.*
- Not to extend to London, &c.*
- Remedy of successor where predecessor makes fraudulent deed to defeat him of dilapidations.*
- 13 Eliz. c. 10. s. 2. Eng. Another species of pecuniary causes cognizable in the ecclesiastical courts, is that of suits for *dilapidation*; in respect to which the 13 Eliz. c. 10. s. 2. Eng. provides, that if any archbishop, bishop, or other having dignity or office in any cathedral or collegiate church; or if any parson or other incumbent of any ecclesiastical living, whereunto do belong any house or other buildings, which he is bound to keep in reparation, do make any alienation of his moveable goods to defeat his successor of his just remedy; the successor may have remedy in any court ecclesiastical for the amendment of the said dilapidations, as if he to whom such alienation shall be made was executor of him that made such alienation.
- 14 Eliz. c. 11. s. 18. Eng. And by the 14 Eliz. c. 11. s. 18. Eng. all money to be recovered for dilapidations, shall, within 2 years, be employed upon the buildings in respect whereof such money shall be paid; on pain that every person so receiving and not employing, shall forfeit double as much
- Money recovered for dilapidations shall be employed in repairs.*

* This clause is not in the 1 Geo. 2. c. 12. Ir.

to the use of the crown. By the 10 W. 3. c. 6. s. 6. Ir. 10 W. 3. c. 6. s. 6. Ir. if any archbishop, bishop, or other ecclesiastical person, shall suffer his mansion house, or any of the buildings, out-houses, gardens, orchards, or other improvements, built or made on their demesnes, glebes, or mensal lands, to be out of repair, then his next successor may sue in the ecclesiastical court against such archbishop, &c. his executors, &c. and have the full benefit of the ecclesiastical laws now in force ; or at his election may recover by action of debt against such archbishop, &c. in any court of record at Dublin, such sum as shall be sufficient to put such houses and improvements in such repair as they were in at any time during the incumbency of such predecessor ; which sum so recovered shall be laid out in the reparation of such houses, &c. ; and in default thereof by the space of 6 months after payment, the archbishoprick, &c. shall be sequestered (by the chief governor in case of an archbishop, and by the archbishop of the province in case of a bishop, and by the bishop of the diocess in all other cases,) until such ecclesiastical person shall expend all sums so recovered, in the reparation of such houses, &c. ; and if such archbishop, &c. shall die before the sum paid to him be so laid out, then his next successor may recover from the executors, &c. of the person so dying, double the said sum, by action of debt in any court of record at Dublin ; unless such executors, &c. shall voluntarily pay the same to such successor ; who is to expend the same in manner aforesaid, and under the like penalties. And if any archbishop, &c. that shall suffer dilapidations or decay in his manse house or improvements contrary to this act, shall make any conveyance, bequest, &c. (without full consideration) of his personal estate, or any part thereof, with intent to defraud his successor of the remedy intended by this act ; any such conveyance, &c. shall be void.

Remedy for dilapidations in ecclesiastical court :

Or by action of debt.

Money recovered to be laid out in repairs.

Conveyances to defraud successor void.

And by the 12 Geo. 1. c. 10. s. 9. Ir. as amended by the 7 Geo. 3. c. 9. s. 3. & 4. Ir. upon any complaint made of dilapidations to the chief governor, or any archbishop or bishop, by the successor of any archbishop, bishop, or other ecclesiastical person, chargeable with the payment of any money for buildings or other improvements,

Commissioners appointed for viewing dilapidations in Ireland.

12 Geo. 1. c. 10. s. 9. Ir.

7 Geo. 3. c. 9. s. 3 & 4. Ir.

Their oath and duty.

Archbishop in the case of a bishop and bishop in the case of other ecclesiasticks, may issue commissions.

40 Geo. 3. c. 82. s. 1. Ir.

Vicars general may issue such commissions.

provements, (certified according to the 12 Geo. 1. c. 10. or any former act) ; it shall be lawful for the said chief governor, &c. respectively, to issue a commission to 2 or more persons to view and examine the buildings and improvements, and to administer an oath to the said commissioners, (or to authorize one or more persons to be named in such commission to administer such oath) to return a true, just, and faithful account and estimate of the said buildings and improvements, according to the best of their skill and knowledge ; and the said commissioners shall have power to examine witnesses upon oath upon any article of account given in ; and shall return a just report of the same to the chief governor, &c. who upon hearing the allegations of each party shall ascertain such sum as he shall judge reasonable to be allowed for such dilapidations ; which sum shall be deducted out of the sum payable by such successor, and shall be by him laid out in repairing such houses, buildings, or improvements ; and such successor shall in 12 months produce proper vouchers to the chief governor, &c. that the same has been justly laid out in such repairs. And by this latter statute (s. 5.) in all cases whatsoever where any bishop, or other ecclesiastical person, shall suffer any dilapidations in the buildings or improvements on their demesne or glebe lands, it shall be lawful for the archbishop of the province in the case of a bishop, or for the bishop in the case of any other ecclesiastical person in his diocess, to issue such commissions, with such powers, and to ascertain such sums as shall be reasonable to be expended or allowed for the repair of such dilapidations, in such manner as is prescribed by the 12 Geo. 1. c. 10. *supra*, and to enforce the payment of such sums, in such manner as by the laws now in being the sums adjudged to be paid or allowed for dilapidations are recoverable. And by the 40 Geo. 3. c. 82. s. 1. Ir. it shall be lawful for the vicar-general of each diocess, during the absence from this kingdom of the archbishop or bishop, to issue commissions or complaints of dilapidations as are directed by the 12 Geo. 1. c. 10. *supra*. By

By the 11 & 12 Geo. 3. c. 17. s. 10. Ir. after such commission has issued, and such steps have been taken to ascertain such sums as shall be reasonable to be expended for the repair of such dilapidations, as by* the laws now in force are directed; it shall be lawful for the several archbishops and bishops in their respective diocesses, to issue a monition, under their archiepiscopal or episcopal seal, to the incumbent of any such benefice or ecclesiastical preferment where such dilapidation hath happened, admonishing such incumbent, within a certain time to be specified in said monition, effectually to repair all such defects, and put the said house and other improvements in such staunch and habitable order and condition, as that the same may be fit for the residence of the incumbent and his successors; and in case the incumbent after being duly served with said monition shall not obey the same, then the several archbishops, &c. shall put one moiety of the rents and profits of such benefices, &c. under sequestration, until a sum shall be received sufficient to answer the purposes of said monition; and every such incumbent, or, in case a vacancy shall happen, every successor of such incumbent, shall effectually repair all such defects as were specified in the said monition, and shall receive from time to time from such sequestrator such sums of money as shall be necessary to complete such repairs; and in 12 months shall produce proper vouchers to the archbishop or bishop, that the sum raised in manner aforesaid has been justly laid out in such repairs. By the 15 Geo. 2. c. 5. s. 5. Ir. it shall be lawful for any archbishop, with the consent of the chief governor by writing under hand and seal, and for any bishop, with the consent of the archbishop of the province, signified by writing under his hand and archiepiscopal seal, to change the site of the mansion house of such archbishoprick or bishoprick, and to make or erect a new mansion-house, out-houses, orchards, gardens, and other necessary improvements, on any other part of his mensal lands, or other lands in his possession belonging

11 & 12 Geo. 3.
c. 17. s. 10. Ir.

Archbishops,
&c. to issue monitions for repair of dilapidations.

And enforce the same by sequestration.

15 Geo. 2. c. 5.
s. 5. Ir.

Remedy for dilapidations not affected by change of site of mansion house.

* The 7 Geo. 3. c. 9. is here erroneously referred to as an act passed in the 8th year of his present majesty.

* *Vide* vol. 1. p. 333.

s. 6.

Proviso.

s. 7.

Proviso.

to his see; and such archbishop, &c. who shall procure such certificate as by the * 12 Geo. 1. c. 10. and 9 Geo. 2. c. 13. is directed, shall receive such sum, at such time, and in such manner, as by said acts he would have been entitled to recover, in case such house, &c. had been built on the old site; and so also his immediate and other successor. Provided (s. 6.) that no archbishop, &c. shall be entitled to have any certificate for building such new house, &c. until he shall execute a release of all demands on account of building or repairing of the house, whereof the site shall be changed pursuant to this act. And by s. 7, no archbishop, &c. or his successors, shall be obliged to keep the former mansion house or out-houses in repair, or be chargeable with dilapidations for not repairing thereof.

The provisions of the marriage act, (26 Geo. 2. c. 33. s. 13. Eng.) and of the 12 Geo. 1. c. 3. s. 4. Ir. which respect matrimonial causes have been already stated (*ante* vol. 1. p. 403-4.) And the statutes which relate to the proving of wills, and granting administrations, which are two branches of the ecclesiastical jurisdiction, have been also stated or referred to in a former part of this work, B. 2. ch. 23.

No person shall be cited out of the diocess where he dwelleth, except in certain cases.

23 Hen. 8. c. 9. s. 1, 2, & 3. Eng.

As to the method of proceeding in the ecclesiastical courts; it is provided by the 23 Hen. 8. c. 9. s. 1, 2, & 3. Eng. that no person shall be cited before any judge spiritual out of the diocess, or peculiar jurisdiction where the person cited shall be inhabiting; except for any spiritual offence, or cause done or neglected to be done, by the bishop or other spiritual judge, or by any other person within the jurisdiction whereunto he shall be cited; Or except it be upon matter of appeal, or for other lawful cause, wherein any party shall find himself grieved by the ordinary, &c. of the diocess, after the matter there first commenced; or in case the bishop, &c. will not convent the party to be sued before him; or in case the bishop, &c. be party to the suit; or in case any bishop, &c. make request to the archbishop, or superior ordinary, to take the matter before him, and that only where the law, civil or canon, doth affirm execution of such request

quest to be lawful; upon pain of forfeiture to the person cited, of double damages and costs, to be recovered by *Penalty.* action of debt, or on the case, in any court of record; and also of £10. for every person so cited, one half to the king, and the other half to him that will sue in any court of record by writ, information, bill, or plaint. Provided, (s. 4.) that it shall be lawful for every archbishop to cite any person inhabiting within his province, for causes of *Proviso as to he- heresy.* heresy, if the ordinary immediate consent, or do not *resy.* his duty. And provided (s. 5 & 7.) that this act shall *s. 5 & 7.* not extend to the prerogatives of the archbishops of Can- *Proviso as to pro- terbury and York, of calling persons for probate of tes- bates.* taments within their respective provinces. By s. 6. no *s. 6.* archbishop, &c. or other having spiritual jurisdiction, *Fees for cita- shall demand more for the seal of any citation, than 3d. tions.* upon the pains before limited. The jurisdiction of the ecclesiastical courts is aided by the 5 Eliz. c. 23. Eng. *5 Eliz. 1. c. 23. s. 1. Eng.* which recites, (s. 1.) that divers offences appertaining to the jurisdiction of the ecclesiastical courts and judges, are *Due execution of the writ de ex- many times unpunished for want of the due execution of communicato capiendo pro- the writ de excommunicato capiendo; for that the said writ vided for.* is not returnable into any court that might have the judg- ment of the well executing and serving of the said writ, &c; and therefore enacts, (s. 2.) that every writ of *excom- municato capiendo*, that shall be awarded out of the court of chancery against any person within the realm, shall be made in term, and returnable in the court of K. B. in the term after the *teste*; and said writ shall contain 20 days between the *teste* and the return: And after the said writ shall be so made and sealed, it shall be forthwith brought into said court of K. B. and there, in the presence of the justices, opened and delivered of record to the sheriff, or other officer, or his deputy: And if the writ be not duly returned, or any default be in the not executing said writ, the justices shall assess such amercement upon the she- riff, or other officer, as shall be thought meet; which amercement shall be estreated into the exchequer. By s. 3. the sheriff, &c. shall not be compelled to bring the body of such person named in the writ into the court at the day of return, but shall only return the writ with de- *claration*

claration briefly how he hath executed the same. And by s. 4. if the sheriff, &c. shall return, that the party cannot be found within his bailiwick, the justices shall award a *capias* against the person named in the *excommunicato capiendo*, returnable in term time, 2 months at least after the *teste*, with a proclamation to be contained within the writ, that the sheriff, &c. in the full county court, or else at the general assizes and gaol delivery, or else at a quarter sessions, shall make proclamation 10 days at least before the return, that the party shall within 6 days after such proclamation, yield his body to the prison of the said sheriff, &c. according to the first writ of *excommunicato capiendo*, upon pain of forfeiture of £10. And thereupon, after the proclamation had, and the 6 days past, the sheriff, &c. shall make return of the *capias* into said court of K. B. of all that he hath done, and whether the party have yielded his body to prison or not.

s. 5. By s. 5. if the parties have not yielded their bodies to prison according to the proclamation, every such person shall, for every default, forfeit to the crown £10. which shall be estreated into the exchequer. And by s. 6. the justices shall thereupon award one other *capias* with like proclamation, and a pain of £20. to be mentioned in the 2d writ and proclamation; and the sheriff, &c. shall execute the same in like manner as the first. And if the sheriff, &c. return upon the 2d *capias*, that he hath made the proclamation, and that the party hath not yielded his body to prison, then the said party shall forfeit to the crown £20. which the justices of K. B. shall likewise cause to be estreated. And by s. 7. the justices shall likewise award one other *capias*, with like proclamation and pain of forfeiture as was contained in the 2d *capias*; and the sheriff, &c. shall execute the 3d *capias* in like manner as the 1st and 2d writs. And if the sheriff, &c. shall make return of the 3d *capias*, that the party hath not yielded his body to prison, such party shall forfeit to the crown other £20. which shall likewise be estreated: and thereupon the said justices shall award a *capias*, with like proclamation, and like pain of forfeiture of £20. and the said justices shall have power infinitely to award such process of *capias* with

Penalty for disobedience.

Second *capias*.

Third *capias*.

Capias, and penalty of £20. continued infinitely.

with like proclamation, and pain of forfeiture of £20. until by return of some of said writs it shall appear that the party hath yielded himself to the custody of the said sheriff, &c. By s. 8. when any person shall yield his body to the sheriff, &c. upon any of the said writs of *capias*, he shall remain in prison without bail, baston, or mainprize, as if he had been apprehended upon the *excommunicato capiendo*. By s. 9. if any sheriff, &c. make an untrue return upon any of the said writs, that the party hath not yielded his body upon the proclamations, such sheriff, &c. shall forfeit £40. which the party grieved shall recover by action of debt, &c. in any court of record. By s. 10. all archbishops and bishops, and others having authority to certify any person excommunicated, shall have like authority to receive the submission of the person excommunicated, and him to absolve and release; and the same to signify into the chancery, and thereupon to have such writs for the deliverance of the person absolved, as heretofore. Provided (s. 11.) that in Wales, the counties palatine, and in the cinque ports, after any *significavit* being of record in the chancery, the tenor of such *significavit* by *mittimus* shall be sent to the head officers of the county in Wales, &c. within whose jurisdiction the offender shall be resiant, viz. to the chancellor or chamberlain for the county of Lancashire, and Chester; and for the cinque ports, to the lord warden; and for Wales, and Ely, and the county of Durham, to the chief justice or justices there; and the said officers shall have power to make like process to the inferior officers there, returnable before the justices there at their next sessions or courts, 2 months at least after the *teste* of such process; so as they shall proceed in their sessions and courts as the justices of the court of K. B. are so limited in term-times to do. By s. 12. any person at the time of any such *capias* awarded, being in prison, or beyond the seas, or within age, or *non sanæ memoriæ*, or woman covert, shall not incur the forfeitures aforementioned; and the party grieved may plead every such matter in bar, upon the distress or other process that shall be made for levying the said forfeitures. And by s. 13. if the offender, against whom

s. 8.

Imprisonment of
the party.

s. 9.

Forfeiture of
sheriff for false
return.

s. 10.

Archbishops to
receive and sig-
nify submissions.

s. 11.

Proviso as to
Wales, &c.

s. 12.

Saving for dis-
abled persons.

s. 13.

Addition of party required in writ.

Causes of excommunication to be specified.

s. 14.

Addition with a nuper.

whom such writ of *excommunicato capiendo* shall be awarded, shall not in the same writ have a sufficient addition, according to the 1 Hen. 5. c. 5.; or if in the *significavit* it be not contained, that the excommunication doth proceed upon some cause or contempt of some original matter of heresy, or refusing to have his child baptized, or to receive the communion, or to come to divine service, or error in matters of religion or doctrine, incontinency, usury, simony, perjury in the ecclesiastical court, or idolatry, then all forfeitures limited against such persons shall be void; and by way of plea to be allowed to the party grieved. And by s. 14. if the addition shall be with a *nuper* of the place, then one writ of proclamation, (without any pain expressed) shall be awarded into the county where the offender shall be most commonly resiant at the time of awarding the first *capias* with pain, returnable the day of the return of the first *capias*. And if such proclamation be not made in the county where the offender shall be most commonly resiant, such offender shall sustain no forfeiture for not yielding his body. There is no statute in Ireland, similar to the 23. Hen. 8. c. 9. or 5 Eliz. c. 23.

The statutes which relate to the jurisdiction of the court military, or court of chivalry; and of the courts maritime, or admiralty courts, and which statutes define the injuries cognizable in these courts respectively, will be found in a preceding chapter of this book.

§ 2.

Cases wherein the writ of prohibition lieth not.

13 Edw. 1. st. 4. E. & I.

II. With respect to the encroachment of jurisdiction, for which injury a remedy is provided by the writ of *prohibition* issuing out of the court of king's bench; the 13 Edw. 1. st. 4. E. & I. declares, that the clergy shall not be punished if they hold plea in court christian of such things as be merely spiritual, viz. of penance enjoined by prelates for deadly sin, as fornication, adultery, and the like, for which sometimes corporal penance, and sometimes pecuniary, is enjoined, especially if a freeman be convict of such things. Also if the prelates punish for leaving the church yard unclosed, or for that the church is uncovered, or not conveniently decked, in which cases none other penance can be enjoined but pecuniary. And if a parson demand of his parishioners

parishioners oblations or tithes due or accustomed, or if a parson sue against another parson for tithes greater or smaller, so that the fourth part of the value of the benefice be not demanded; or if a parson demand mortuaries where a mortuary hath been used; and if a prelate (or patron) demand of a parson a pension due to him; all such demands are to be made in a spiritual court: And for laying violent hands on a clerk, and cause of defamation, it shall be tried in a spiritual court, when money is not demanded, but a proceeding for punishment of sin. In all cases afore rehearsed, the spiritual judge shall have power to take cognizance, notwithstanding the king's prohibition. And by the 9 Edw 2. st. 1. c. 1. 9 Edw. 2. st. 1. c. 1. E. & I. E. & I. in tithes, obventions, oblations, mortuaries, (when they are propounded under these names) the king's prohibition shall hold no place. But if a clerk sell his tithes, No prohibition where tithes be demanded. being gathered, if the money be demanded before a spiritual judge, the king's prohibition shall lie, for the spiritual goods are made temporal. But by this statute (c. 2.) Exception. c. 2. if debates arise upon the right of tithes, having original from the right of patronage, and the quantity of the tithes come to the fourth part of the goods of the church, If right of tithes controverted, prohibition lies. the king's prohibition shall hold place, if the cause come before a judge spiritual. Also if a prelate enjoin a penance pecuniary, and it be demanded, the king's proclamation shall hold place; but if prelates enjoin a penance corporal, and they which be punished will redeem such penance by money, if the money be demanded before a judge spiritual, the king's prohibition shall not hold place. But by c. 3 & 4. in cases of laying violent hands upon a clerk, or in cases of defamation, if the offender will redeem the penance corporal (which by this statute the prelate may enjoin) by giving money to the prelate, or the party grieved, it shall be required before the prelate, and the king's prohibition shall not lie. And by the 1 Edw. 3. st. 2. c. 11. E. & I. when clerks or others have 1 Edw. 3. st. 2. c. 11. E. & I. been indicted in the turn, and after their deliverance do sue in the spiritual court against the indictors, surmising that they defamed them; in such case every man grieved shall have a prohibition formed in the chancery upon his No suit in spiritual court against indictors. case.

case. But by the 18 Edw. 3. st. 3. c. 5. E. & I. no prohibition shall go out of chancery, but where the king hath cognizance, and ought to have it. And by the

2 Hen. 5. st. 1. c. 3. E. & I.

A copy of the libel shall be delivered.

In what case a writ of consultation is grantable.

24 Edw. 1. E. & I.

50 Edw. 3. c. 4. E. & I.

No prohibition after consultation.

When writ of indicavit is to be granted.

34 Edw. 1. st. 1. E. & I.

Prohibition under what circumstances granted in suits for tithe of barren land.

33 Geo. 3 c. 25. s. 2. Ir.

2 Hen. 5. st. 1. c. 3. E. & I. at what time the libel is grantable by law, it shall be delivered to the party without difficulty, that the parties cited may be informed whether to give their answer thereto, or otherwise to purchase a writ of prohibition.

The 24 Edw. 1. E. & I. provides, that where ecclesiastical judges surcease to proceed by force of the king's prohibition, in cases where remedy could not be given in the king's court by any writ out of chancery, the chancellor, or the chief justice, upon sight of the libel, at the instance of the plaintiff, (if they see that the case cannot be redressed by writ out of chancery, but that the spiritual court ought to determine the matter) shall write to the ecclesiastical judges, that they proceed therein notwithstanding the king's prohibition. And by the 50 Edw. 3. c. 4. E. & I. where a consultation is once duly granted upon a prohibition to the judge of holy church, the judge may proceed notwithstanding any other prohibition, provided the matter in the libel be not changed.

With respect to the writ of prohibition called *indicavit*. The 34 Edw. 1. st. 1. E. & I. contains a provision, that a writ of *indicavit* shall not be granted before the suit pending in the spiritual court between the parties be recorded, and the chancellor be certified thereupon by sight of the libel.

By the 33 Geo. 3. c. 25. s. 2. Ir. where any suit shall be commenced before any ecclesiastical judge, relating to the recovery of any tithes in which any question shall arise, whether the land is exempted from tithes by virtue of this act,* no prohibition shall be granted, unless the party demanding such prohibition shall deliver to one of the justices of the court in which such prohibition shall be applied for, a copy of the libel or petition depending in the ecclesiastical court, subscribed or marked with the hand of such party; and under the copy of said libel, &c.

* An act to encourage the improvement of barren land, vide B. 2. p. 435. shall

shall be written the suggestion wherefore the party demandeth the prohibition; and in case the said suggestion, by 2 witnesses, be not proved true within 6 months after the prohibition shall be granted, the party letted thereby shall have a consultation, and shall recover double costs and damages to be assessed by the court where the consultation shall be granted, for which the party may have an action of debt by bill, plaint, or information in any court of record. This clause is taken from the 2 & 3 Edw. 6. c. 13. s. 14. Eng. *ante* p. 76.

CHAP. VIII.

Of Wrongs and their Remedies respecting the rights of Persons.

AS to the wrongs affecting the personal security of individuals: the 37 Hen. 8. c. 6. Eng. which regards the offence of mayhem as a civil injury, as well as punishable criminally, might be referred to this head; but this statute will be found in another place.

With respect to the violation of the right of personal liberty: It was a provision of the great charter (9 Hen. 3. c. 26. E. & I.) that the writ of inquisition of life or member, should be granted *gratis*, and not denied. And by the 3 Edw. 1. c. 11. E. & I. such inquests were required to be taken, by lawful men chosen out by oath, (of whom 2 at least should be knights) which by no affinity with the prisoner, nor otherwise, were to be suspected. But the 6 Edw. 1. st. 1. c. 9. E. & I. enacted, that no writ should be granted out of chancery for the death of a man, to inquire whether a man did kill another by misfortune, or in his own defence, or in other manner without felony; but that he should be imprisoned

§ 1.

Writ de odio et atia grantable.

9 Hen. 3. c. 26. E. & I.

3 Edw. 1. c. 11. E. & I.

Inquisition thereon.

6 Edw. 1. st. 1. c. 9. E. & I.

This writ not to issue in cases of killing by misadventure, &c.

28 Edw. 3. c. 9.
E. & I.
*Writ abolished
in all cases.*

42 Edw. 3. c. 1.
E. & I.
But revived. 2u?

*Writ of habeas
corpus to be
signed by the
chief justice, &c.*
1 & 2 Ph. & M.
c. 13, s. 7. Eng.

10 Car. 1. st. 2.
c. 13, s. 2. Ir.

*Form of such
writs prescribed.*

*Issuing habeas
corpus not ne-
cessary to charge
prisoner with de-
claration.*

4 & 5 W. & M.
c. 21, s. 1 & 2.
Eng.

soned until the coming of the justices in Eyre or justices of gaol delivery, and should put himself on the country before them, for good or evil: And in case it should be found by the country, that he did it in his own defence, or by misadventure, then, report being made thereof by the justices to the king, that the king should take him to his grace, if it so pleased him. And the 28 Edw. 3. c. 9. E. & I. recites, that sheriffs had by virtue of commissions and general writs granted to them at their own suit, and for their own profit, taken divers inquests to indict the people, and had taken fine and ransom of them to their own use, and delivered them without bringing them before the king's justices for their deliverance; and therefore enacts, that no such commissions or writs shall be granted. But the 42 Edw. 3. c. 1. E. & I. having confirmed the great charter, and declared all statutes contrary thereto to be void, it is therefore questionable how far this writ *de odio et atia* is thereby revived.

§ 2.

II. As to the writ of *habeas corpus*: the 1 & 2 Ph. & M. c. 13. s. 7. Eng. provides, that no writ of *habeas corpus* [or *certiorari*] shall be granted to remove any prisoner out of gaol, except the same writs be signed with the proper hands of the chief justice, or, in his absence, one of the justices of the court out of which such writ shall issue; upon pain that he that writeth such writs, not being signed as aforesaid, shall forfeit to the king £5. for every such writ. The 10 Car. 1. st. 2. c. 18. Ir. contains a similar provision, but further provides, that such writs shall contain a clause, to certify the true cause of the imprisonment, and the cause of the taking of the recognizance, and the names of the justices of the peace who committed such prisoner, and took such recognizance: and all writs issued contrary to this act shall be void.

One species of this writ, *viz. habeas corpus ad respondendum* is referred to by the 4 & 5 W. & M. c. 21. Eng. which recites, that after plaintiffs were at great charge to arrest the defendants upon writs issuing out of the courts at Westminster, and defendants for want of bail were committed to gaol, yet by the practice of such courts, unless such plaintiffs before the end of 2 terms after such arrest,

arrest, caused the defendants by writ of *habeas corpus* to be removed, to be charged in the said courts with declarations of the cause of such actions, such prisoners were upon common bail, or appearance by attorney, discharged from their imprisonment; and therefore enacts, that where any defendant shall be taken or charged in custody at the suit of any person, upon writ out of any [*court of record at Westminster] and imprisoned or detained in prison for want of sureties for his appearance to the same, the plaintiff in such writ shall and may, before the end of the next term after such writ or process shall be returnable, declare against such prisoner in such court out of which such writ shall issue, and shall cause a true copy thereof to be delivered to such prisoner, or to the keeper of the prison or gaoler in whose custody such prisoner shall be; to which declaration the prisoner shall appear and plead; and if such prisoner shall not appear and plead, †the plaintiff shall have judgment, as if the prisoner had appeared and refused to plead. And by s. 3. in all declarations against prisoners detained by virtue of any writ or process issued out of the court of king's bench, it shall be alleged in custody of what sheriff, or other person having the return and execution of writs, such person shall be at the time of such declaration; which allegation shall be as good as if such prisoner were in the custody of the marshal of the [‡marshalsea.] The 8 Ann. c. 9. Ir. has followed this statute with such deviation as is noted in the margin. For the better enabling persons to recover their just debts against persons who continue prisoners in the Fleet with intent to delay their creditors; the 13 Car. 2. st. 2. c. 2. s. 5. Eng. provides, that every person who shall have cause of any personal action against any prisoner [§in the fleet,] may sue forth an original writ; and that a *habeas corpus* be granted to such plaintiff, directed to the [||warden] of said prison, to have the body of such prisoner before the justices of the common pleas, ¶ at some certain day in any term, to answer the plaintiff upon his said cause of action; and if

* "Four courts
Dublin" in
8 Ann. c. 9. Ir.

s. 3.

Declaration
against prisoners
in K. B. must
state in whose
custody he is.

† "Four courts"
in 8 Ann. c. 9.
Ir.

13 Car. 2. st. 2.
c. 2. s. 5. Eng.
How persons
having cause of
action may pro-
ceed against pri-
soners in the
Fleet.

§ "In prison" by
7 W. 3. c. 25. Ir.

|| "Gaoler or
keeper" by 7
W. 2. c. 25. Ir.

¶ "Or king's
bench" added
by 7 W. 3. c. 25.

said Ir.

† "Before the end of next term after such declaration shall be delivered here" added by 8 Ann. c. 19. Ir.

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H

* "Gaoler or
keeper," in
7 W. 3. c. 25.

7 W. 3. c. 25.
s. 4. Ir.

Prisoner not re-
moveable by
habeas corpus
cum causa
after judgment.

2 Hen. 5. st. 1.
c. 2. E. & I.

8 Geo. 1. c. 6.
s. 9. Ir.

Defendant in
execution not
removed by ha-
beas corpus
till expenses of
removal deposit-
ed.

43 Eliz. c. 5.
Eng.

Habeas corpus
cum causa shall
be delivered be-
fore jury sworn.

said plaintiff, at said day, put into the said court his declaration, according to the original writ, against the said prisoner being present at the bar, said prisoner shall be bound to appear in person, or to put in an attorney to appear for him in said action; and unless the defendant plead upon a rule given, to be out 8 days at least after such appearance, judgment by *nihil dicit* may be entered against such defendant. And such charge in court by declaration, signified by rule unto the said [*warden] shall be a good cause of detention of such prisoner, from which he shall not be discharged without a lawful *superseas*, or rule of court; and if the said [*warden] shall do otherwise, he shall be responsible to the court; and to the party grieved for damages by action upon the case. The 7 W. 3. c. 25. Ir. contains a similar provision; but this Irish act extends this mode of declaring against prisoners, to the court of king's bench as well as to the court of common pleas; and applies to the prison of the one as well as of the other.

Next as to the writ of *habeas corpus ad faciendum et recipiendum*, more commonly called *habeas corpus cum causa*: The 2 Hen. 5. st. 1. c. 2. E & I. provides, that if upon any [*certiorari* or] *corpus cum causa* it be returned that the prisoner is condemned by judgment, he shall be remanded, and remain in prison without being let to bail against the will of the plaintiffs, until satisfaction be made to them of the sums adjudged. The 8 Geo. 1. c. 6. s. 9. Ir. provides, that no sheriff or other officer to whom any *habeas corpus* taken out for any defendant shall be directed, shall be obliged to remove the body of such defendant, being in custody on any execution taken out on a judgment in any civil action, by virtue of such writ of *habeas corpus*, until such defendant shall deposit such sum to defray the expenses of the said removal, as the court or judge who grants the said *habeas corpus* shall think proper. The 43 Eliz. c. 5. Eng. recites, that defendants in actions, complaints, and suits, brought within cities, towns corporate, and other privileged places, used to suffer such actions, &c. to be proceeded in until issue, and the jury sworn, and evidence given on the plaintiff's part, before said defendants delivered

livered writs to remove such causes, &c. which was a great cause of perjury and subornation of perjury, and of great expenses to the plaintiffs; and therefore enacts that no *habeas corpus*, or other writ, sued forth of any of the courts at Westminster, to remove any cause depending in any court, shall be allowed, except the said writ be delivered to the judge or officer before the jury have appeared, and one of the jury sworn. And the 21 Jac. 1. c. 23. s. 2. Eng. further provides, that no *habeas corpus*, *certiorari*, or other writ or process, (other than writ of error or attaint) to be sued forth of any court having or pretending to have power to award such writ, to stay or remove any cause depending in any court of record, which shall have jurisdiction to hold plea in that cause, shall be received or allowed, except such writ be delivered to the steward, judge, or officer, before issue or demurrer joined, so as the said issue or demurrer be not joined within 6 weeks next after the arrest or appearance. And by s. 3. if any such cause be removed or stayed by any such writ, &c. and afterwards the same cause be remanded by *procedendo*, or other writ, the same cause shall never afterwards be removed or stayed before judgment by any writ whatsoever. By s. 4. if in any cause (not concerning freehold, or title of land, lease, or rent) it appears or be laid in the declaration, that the debt, damages, or thing demanded, do not amount to or exceed £5. such cause shall not be stayed, nor removed into any other court, by any writ, other than writ of error or attaint. And by s. 5. if any writ be sued forth contrary to this act, it shall be lawful for the judge or officer, to whom such writ shall be directed, to disallow the same, and to proceed as if such writ had been granted. [*Provided (s. 6.) that this act shall extend only to such courts of record, and for so long time only, as there shall be an utter barrister of 3 years standing, that shall be steward, town-clerk, judge, or recorder of said court, or that shall be assistant to such judge, and there present, and not of counsel in any cause there depending in said court. And by s. 7. this act shall not extend to any cause

21 Jac. 1. c. 23.
s. 2. Eng.

Such writ to be delivered before issue or demurrer joined.

s. 3.

A suit remanded shall never be removed.

s. 4.

Where demand exceeds not £5. suit not removed.

s. 5.

s. 6.

Proviso,

s. 7.

Proviso.

* These clauses within the crotchets not in the 9 W. 3. c. 13. Ir.

12 Geo. 1. c. 29.
s. 3. Eng.

*Evasion of the
21 Jac. 1. ob-
viated.*

19 Geo. 3. c. 70.
s. 6. Eng.

*Causes under
£10. not re-
moved unless
upon security to
pay debt and
costs.*

W. 3. c. 13.
r.

19 & 20 Geo. 3.
c. 38. s. 7. Ir.

*Habeas corpus
may issue to
bring prisoners
for trial, or to
be examined as
witnesses, before
courts martial,
&c.*

43 Geo. 3. c. 140.
E.

wherein any such plea shall be pleaded, as could not be tried within the jurisdiction of such inferior court.] And the 12 Geo. 1. c. 29. s. 3. Eng. recites, that the statute (21 Jac. 1. c. 23.) was evaded by defendants setting up fictitious actions against themselves for £5. or upwards, and by such contrivance procured the smallest actions to be removed by *habeas corpus*; and therefore enacts, that the judges of such inferior courts, as are described in the 21 Jac. 1. c. 23. *supra*, may proceed in such causes as therein specified, which appear, or are laid, not to exceed £5. though there may be other actions against such defendants, wherein the plaintiffs demands may exceed £5. And by the 19 Geo. 3. c. 70. s. 6. Eng. no cause, wherein the cause of action shall not amount to the sum of [*£10.] shall be removed into any superior court by any writ of *habeas corpus*, or otherwise, unless the defendant shall enter into a recognizance, to be acknowledged in the inferior court, with 2 sufficient sureties, in double the sum for which such action is brought, for payment of the debt and costs, in case judgment shall pass against him. In Ireland the 9 W. 3. c. 13. Ir. contains clauses corresponding to the 21 Jac. 1. c. 23. s. 1. 2. 3. 4 & 5. *supra*; omitting to follow the 6th & 7th sections: And the 19 & 20 Geo. 3. c. 38. Ir. contains also a provision (s. 7.) similar to that of the 19 Geo. 3. c. 70. s. 6. *supra*, except as to such distinction as is noted in the margin: But the 43 Eliz. c. 5. *supra*, as also the 12 Geo. 1. c. 29. s. 3. *supra*, have remained without adoption in Ireland.

The 43 Geo. 3. c. 140. E. is a statute which respects the writ of *habeas corpus ad testificandum*: This act provides, that it shall be lawful for any judge of the courts of K. B. or C. B. or for any baron of the court of Exc. of the degree of the coif, at his discretion, to award a writ of *habeas corpus* for bringing any prisoner detained in any gaol or prison in England, before any court martial, or before any commissioners of bankrupt, commissioners for auditing the public accounts, or other

* £5. is the sum mentioned in the 19 & 20 Geo. 3. c. 38. Ir.

commissioners acting by virtue of any commission or warrant from the king, for trial, or to be examined touching any matter depending before such courts martial, or commissioners; and the like proceedings shall be had upon such writs, as upon writs of *habeas corpus* for bringing persons detained in gaol before magistrates, or courts of record, for such purposes. And by the 44 Geo. 3. c. 102. E. & I. it shall be lawful for any judge of the court of K. B. or C. B. of England and Ireland respectively, or any baron of Exc. of the degree of the coif in England, or baron of Exc. in Ireland, or any justice of *oyer and terminer* or gaol delivery, being such judge or baron as aforesaid, at his discretion, to award a writ of *habeas corpus* for bringing any prisoner detained in any gaol or prison before any of said courts, or any sitting of *nisi prius*, or before any other court of record in said parts of the united kingdom, to be examined as a witness before such courts, or any grand, petit, or other jury, in any cause or matter, civil or criminal. And by s. 2. every justice of great session in Wales, and in the county palatine of Chester, shall have the like authority. The 38 Geo. 3. c. 26. s. 2. Ir. also provides, that it shall be lawful for justices of assize, *nisi prius*, or commissioners of *oyer and terminer*, and gaol delivery, by order in writing, to be by them respectively signed, to direct any person in execution, and in the custody of any sheriff or other officer, in any county where they shall sit, to be brought up for the purpose of giving evidence in any cause or trial before them. And by s. 3. if any action be brought against any sheriff, or other officer, for bringing up any person in execution in obedience to such order, he may plead the general issue, &c. and shall recover double costs of nonsuit, discontinuance, or verdict.

44 Geo. 3. c. 102.
E. & I.

*Habeas corpus
ad testifican-
dum by whom
issuable.*

s. 2.

38 Geo. 3. c. 26.
s. 2. Ir.

*Judges of as-
size, &c. may
order persons in
execution to be
brought up to be
examined as
witnesses.*

s. 3.

I have in a preceding part of this work (Book 1. Chap. 1.) already stated the provisions of the 16 Car 1. c. 10. Eng. which asserted and enforced the right of the subject to obtain the great remedial writ of *habeas corpus ad subjiciendum*, in cases either of imprisonment within the realm by the king, or his privy council, or by any court exercising any arbitrary jurisdiction similar to the court

*Writ of habeas
corpus ad sub-
jiciendum in
what cases to
issue.*

16 Car. 1. c. 10.
Eng.

31 Car. 2. c. 2.
Eng.

of

of Star Chamber which was thereby abolished. And I have referred to the same place the provisions of the 31 Car. 2. c. 2. Eng. (commonly called the *Habeas Corpus* Act) which relate to imprisonments beyond the seas: But I have reserved for this part of the work, the provisions of this latter statute, which were calculated to prevent the delays and shifts which were used by sheriffs, and other officers, to avoid the due execution of this writ.

31 Car. 2. c. 2.
s. 2. Eng.

Writs of habeas corpus within 3 days after service to be returned, &c.

*"6d per mile" by the
21 & 22 Geo. 3.
c. 11. Ir.

s. 3.

Writs of habeas corpus and proceedings thereon in vacation.

By s. 2. when any person shall bring any *habeas corpus* directed to any sheriff, gaoler, or other person, for any person in his custody, and the writ shall be served upon the said officer, or left at the prison with any of the under officers; such officer shall, within 3 days after service thereof, (unless the commitment were for treason or felony expressed in the warrant,) upon payment or tender of the charges of bringing the prisoner, (to be ascertained by the judge or court that awarded the same, and indorsed upon the writ,) not exceeding [*12d. per mile,] and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded, and that he will not make escape by the way, make return of such writ; and bring the body before the lord chancellor, or the judges or barons of the court from whence the writ shall issue, or before such other person before whom such writ is returnable, according to the command thereof, and shall certify the causes of his detainer or imprisonment; unless the commitment be in any place beyond the distance of 20 miles from the place where such court or person shall be residing; and if beyond 20 miles, and not above 100 miles, then within 10 days; and if beyond 100 miles, then within 20 days after such delivery. And by s. 3. all such writs shall be marked in this manner, [*†per statutum tricesimo primo Caroli secundi regis*] and shall be signed by the person that awards the same; and if any person shall stand committed or detained for any crime (unless for felony or treason expressed in the warrant) in the vacation time, it shall be lawful for the person, (other than persons convict, or in

† "By the statute of the 22d year of the reign of king George the third" in 21 & 22 Geo. 3. c. 11. Ir.

execution,)

execution,) or any one on his behalf, to complain to the lord chancellor, or any one of the justices of the one bench or the other, or the barons of the exchequer [*of * These words not in 21 & 22 Geo. 3. c. 11. Ir.] and the lord chancellor, justice, or baron, upon view of the copy of the warrant of commitment and detainer, upon oath that such copy was denied, are required, upon request made in writing by such person, or any on his behalf, attested by 2 witnesses present at the delivery of the same, to grant a *habeas corpus* under the seal of such court whereof he shall be one of the judges, directed to the officer in whose custody the party shall be, returnable immediate before the lord chancellor, or such justice or baron, or any other justice, or baron [of the degree of the coif*] of said courts; and upon service thereof as aforesaid, the officer, or his deputy, shall bring such prisoner before the lord chancellor, or such justices, barons, or one of them, before whom the writ is returnable, and in case of his absence, before any other of them, with the return of such writ, and the causes of commitment and detainer; and thereupon, within 2 days, the lord chancellor, or such justice, or baron, shall discharge the prisoner, taking his recognizance, with one or more sureties, in any sum according to their discretions, (having regard to the quality of the prisoner, and the nature of the offence) for his appearance in the court of king's bench, the term following, or at the next assizes, sessions, or general gaol-delivery, for such county or place where the commitment was, or where the offence was committed, or in such other court where the offence is cognizable; and shall certify the writ, with the return and the recognizance, into the court where the appearance is to be made; unless it shall appear to the said lord chancellor, justice, or baron, that the party is detained upon a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice of peace, for such matters for which the prisoner is not bailable. Provided, (s. 4.) that s. 4. if any person shall have wilfully neglected 2 whole terms Proviso. after

s. 5.
Officers how to
be proceeded
against for not
obeying such
writs.

†“Dublin” in
21 & 22 Geo. 3.
c. 11. Ir.

Persons set at
large not to be
re-committed
without order of
court.

No person to be
discharged by
this act from civil
process.

s. 8.

s. 9.

Persons com-
mitted for crimes,
in what cases
only to be re-
moved.

after his imprisonment to pray a *habeas corpus*, he shall not have any *habeas corpus* in vacation time in pursuance of this act. By s. 5. if any officer or his deputy shall not make the returns, or bring the body of the prisoner, according to the command of the writ; or, upon demand made by the prisoner, or person in his behalf, shall refuse to deliver, or within 6 [*hours] shall not deliver to the person demanding, a copy of the warrant of commitment and detainer of such prisoner, such person in whose custody the prisoner shall be, shall for the 1st. offence forfeit to the party grieved £100.; and for the 2d offence £200.; and be incapable to hold his said office; the said penalties to be recovered by the party grieved, his executors, &c. against such offender, his executors, &c. by action of debt, &c. in any of the king's courts at [†Westminster]; and any recovery at the suit of any party grieved shall be sufficient conviction for the 1st offence; and any after recovery for any offence after the first judgment shall be a sufficient conviction for the 2d offence. And, “for the prevention of unjust vexation by reiterated commitments for the same offence” by s. 6. no person set at large upon a *habeas corpus* shall be again imprisoned for the same offence, other than by the legal order and process of such court wherein he shall be bound by recognizance to appear, or other court having jurisdiction; and if any person shall knowingly re-commit or imprison, or cause to be re-committed, &c. for the same offence, any person set at large as aforesaid, or be knowingly aiding or assisting therein, he shall forfeit to the party grieved £500. any colourable variation in the warrant notwithstanding.

It is provided (s. 8.) that nothing in this act shall extend to discharge any person charged with process in any civil cause. And by s. 9. if any subject of this realm shall be in custody for any criminal matter, he shall not be removed into the custody of any other officer, unless by *habeas corpus*, or other legal writ; or where the prisoner is delivered to the constable or other inferior officer

*“Months” is the word in the text, and “hours” in the margin of the statute (21 & 22 Geo. 3 c. 11. Ir.) as printed.

to carry to some common gaol; or where any person is sent by order of any justice of assize, or justice of peace, to any common work-house or house of correction; or where the prisoner is removed from one place to another within the same county in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity: *Penalty for other removal.* and if any person shall sign or countersign any warrant for such removal contrary to this act, as well he, as the officers that obey the same, shall incur the forfeitures before mentioned, both for the first and second offence, to be recovered as aforesaid by the party grieved. By s. 10. it shall be lawful for any prisoner to obtain his *habeas corpus* as well out of the chancery or exchequer, as out of the king's bench or common pleas; and if the lord chancellor, or any judge or baron [*of the degree of the coif] in the vacation, upon view of the copies of the warrants of commitment or detainer, or upon oath that such copies were denied, shall deny a *habeas corpus* by this act required to be granted, being moved for as aforesaid, they shall forfeit to the party grieved £500. to be recovered as aforesaid. [† And by s. 11. a *habeas corpus* according to this act may be directed into any county palatine, the cinque ports, or other privileged places, and the islands of Jersey or Guernsey.] By s. 18. after the assizes proclaimed for any county, no person shall be removed from the common gaol upon *habeas corpus* in pursuance of this act, but shall be brought before the judge of assize in open court; but by s. 19. after the assizes ended any person may have his *habeas corpus* according to this act. And by s. 21. where any person shall be committed by any judge or justice of peace, and charged as accessory before the fact to any petty treason or felony,‡ or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony‡ shall be plainly and specially expressed in the warrant, such person shall not be removed or bailed by virtue of this act. By s. 17. no person shall be sued for any offence against this act unless he be sued within 2 years after the offence committed, in case the party grieved shall not be then in

Penalty for other removal.

s. 10.

Penalty for denying habeas corpus.

* These words not in 21 & 22 Geo. 3. c. 11. Ir.

s. 11.

Habeas corpus shall run in privileged places.

s. 18.

After assizes proclaimed no prisoner to be removed but before the judge of assize.

s. 19.

s. 21.

Proviso as to persons committed as accessories to petty treason, or felony, or upon suspicion.

s. 17.

Prosecutions for offences against this act within 2 years.

† This clause not in the 21 & 22 Geo. 3. c. 11. Ir.

‡ "Or murder" added in the 21 & 22 Geo. 3. c. 11. s. 15. Ir.

prison;

s. 20:

*General issue
pleadable.*21 & 22 Geo. 3.
c. 11. Ir.

prison; and if he be in prison, then within 2 years after the decease of the person imprisoned, or his delivery out of prison, which shall first happen. And by s. 20. if any suit be brought for any offence against this law, such defendant may plead the general issue not guilty, or that he owes nothing. The 21 & 22 Geo. 3. c. 11. Ir. contains clauses corresponding to those of the 31 Car. 2. c. 2. Eng. above stated; with such deviations however as are noted in the margin.

§ 3.

*Injuries to hus-
band.*3 Edw. 1. c. 13.
E. & I.

12 Car. 2. c. 24.

s. 8. Eng.

14 & 15 Car. 2.
c. 19. s. 6. Ir.*Action of ravish-
ment of ward.*13 Edw. 1. st. 1.
c. 35. E. & I.

III. With respect to the injuries that may be offered to a person considered as a husband: The 3 Edw. 1. c. 13. E. & I. which prescribes a limitation for appeals of rape, and punishes this offence as a trespass or misdemeanor, will be stated in another place. But as to the injuries incident to the relation of a guardian and ward: the 12 Car. 2. c. 24. s. 8. Eng. provides, that such person to whom the custody of any child shall be disposed or devised by virtue of this act* may maintain an action of ravishment of ward or trespass, against any person that shall wrongfully take away or detain such child, for the recovery of such child; and shall recover damages for the same in said action, for the use of such child. The 14 & 15 Car. 2. c. 19. Ir. contains a similar clause. By the 13 Edw. 1. st. 1. c. 35. E. & I. a certain form was prescribed for the ancient writ of ravishment of ward, and a particular mode of proceeding was thereby pointed out in such cases; but this statute seems to have been rendered obsolete by the abolition of the military tenures, and of wardship as one of the incidents thereto.

* Vide Book 1. page 418.

CHAP. IX,

Of Injuries to Personal Property.

FIRST, as to the injury of an unlawful taking or detain-
 ing:* A jurisdiction was given to sheriffs to hold pleas in re-
 plevin, by plaint, of any value, by the 52 Hen. 3. c. 21.
 E. & I. which enacts, that if the beasts of any man be
 taken, and wrongfully withholden, the sheriff, after
 complaint made to him, may deliver them, if they were
 taken out of liberties; and if the beasts were taken within
 any liberty, and the bailiffs of the liberty will not deliver
 them, the sheriff shall cause them to be delivered. And
 the 3 Edw. 1. c. 17. E. & I. further provides, that if any
 take the beasts of other, and cause them to be driven in-
 to a castle or fortress, and there withhold them against
 gages or pledges, (whereupon the beasts be solemnly de-
 manded by the sheriff, or by some other bailiff of the
 king, at the suit of the plaintiff,) the sheriff or bailiff,
 taking with him the power of the shire or bailiwick, do
 essay to make replevin; and if any deforce him of the de-
 liverance, or that no man be found for the lord to make
 deliverance, after such time as the taker shall be admo-
 nished to make deliverance by the sheriff, &c. the king,
 for the trespass and despite, shall cause the castle, &c.
 to be beaten down; and all damages that the plaintiff
 hath sustained in his beasts or otherwise, (after the first
 demand made by the sheriff, &c) shall be restored to
 him double, by him that took the beasts, if he have
 whereof, and if he have not he shall have it of the lord.
 And when the sheriff ought to return the king's writ to the

*Jurisdiction gi-
 ven to sheriffs to
 hold pleas in re-
 plevin by plaint.*

*52 Hen. 3. c. 21.
 E. & I.*

*3 Edw. 1. c. 17.
 E. & I.*

*Remedy if dis-
 tress impounded
 in a castle, &c.*

* The provisions of the 2 W. & M. st. 1. c. 5. Eng. which have been stated
 (pages 3 & 11) may be referred to this head, but it was thought a more conve-
 nient arrangement to state them in that place.

13 Edw. 1. st. 1.
c. 2. s. 1 & 2.
E. & I.

Where plea of
hors de son fee
in county court,
pone or recor-
dari to remove
cause.

s. 3.

Sheriffs to take
pledges de re-
torno habendo.

bailiff of the lord of the castle, &c. or to any other to whom the return belongeth, if the bailiff of the franchise will not make deliverance, the sheriff shall do his office. And in like manner deliverance shall be made by attachment of plaint made without writ. And if it be done in any place where the king's writs be not current, the king, which is sovereign lord, shall do right. The 13 Edw. 1. st. 1. c. 2. s. 1 & 2. E. & I. recites, that lords of fees distraining their tenants for services and customs due, were many times grieved because their tenants replevied such distress; and when the lords came to avow the taking, their tenants disclaimed to hold of them that took such distress, and so they that distrained were amerced, and the tenants went quit; and therefore provides, that where such lords cannot obtain justice in the counties, or in such courts, as soon as they shall be attached at the suit of their tenants, a writ shall be granted to put the matter before the justices; and the cause put in the writ shall be this—because such a man distrained in his fee for services and customs to him due. And because the tenant after that he hath replevied his beasts, doth sell or alien them, whereby return cannot be made unto the lord that distrained if it be adjudged; this statute (s. 3) further provides, that sheriffs or bailiffs shall not only receive of the plaintiffs pledges *de prosequendo*, before they make deliverance of the distress, but also *de averiis retornandis*, if return be awarded: and if any take pledges otherwise, he shall answer for the price of the beasts; and the lord that distraineth shall have his recovery by writ *quod reddat ei tot averia, vel tot catalla*; and if the bailiff be not able to restore it, his superior shall. And forasmuch as after the return so awarded, and the beasts returned, yet the party distrained used to replevy again, and so *in infinitum*; it is hereby further provided, that so soon as the return of the beasts shall be awarded, the sheriff shall be commanded by a judicial writ to make return unto the distrainer, in which writ it shall be expressed, that the sheriff shall not deliver them without writ making mention of the judgment given by the justices; which cannot be without a writ issuing out of the rolls of the said justices before whom the

the matter was moved. Therefore when he cometh unto the justices, and desireth again replevin of the beasts, he shall have a judicial writ, that the sheriff, taking surety of him for the prosecution of the suit, and also for a return of the beasts, &c. (or the value of them) if a return be awarded, shall deliver unto him the beasts, &c. before returned; and the distrainer shall be attached to come at a certain day before the justices, afore whom the plea shall be moved in the presence of the parties: And if he that replevied make default again, or for another cause a return be awarded, the distress shall remain irreplevisable. But if the distress be taken of new and for a new cause, the above process shall be observed in the new distress.

Writ of second deliverance.

Return irreplevisable.

For the more speedy delivery of cattle taken by way of distress; the 1 & 2 Ph. & M. c. 12. s. 3. Eng. enacts, that every sheriff of shires, (being no cities nor towns made shires,) shall, at his first county-day, or within 2 months after he hath received his patent of office, appoint and proclaim in the shire-town, 4 deputies at the least, dwelling not above 12 miles distant from each other; which deputies shall have authority in the sheriff's name to make replevins, and deliverance of distresses; upon pain that every sheriff, for every month that he shall lack such deputy, shall forfeit £5; one half to the king, and the other to him that will sue for the same by action of debt, &c. in any court of record. And the same provision is contained in the 10 Car. 1. st. 2. c. 25. Ir: But the 3 Geo. 2. c. 9. s. 4. Ir. further provides, that the sheriff of every county (not being a city) shall, within one month after his entering upon his office, appoint 4 deputies at the least in the most convenient parts of the county, who shall have authority in the sheriff's name to make replevins, &c.; upon pain of forfeiting for every month that he shall not have such deputies, £10. to such person as shall sue by civil bill. Provided (s. 5.) that no sheriff or sub-sheriff, shall take any fee or reward for appointing such deputies; upon pain of forfeiting £50. to be recovered by such person who shall first sue for the same by action of debt, &c. in any of the four courts in Dublin;

The sheriff shall appoint 4 deputies to make replevins.

1 & 2 Ph. & M. c. 12. s. 3. Eng.

10 Car. 1. st. 2. c. 25. s. 3. Ir. 3 Geo. 2. c. 9. s. 4. Ir.

s. 5.

Dublin; one moiety to the king and the other to the informer.

In distresses for rent, bond with 2 sureties to be taken.

11 Geo. 2. c. 19. s. 23. Eng.
36 Geo. 3. c. 38. Ir.

Such bond assignable to avowant, &c.

8 Geo. 1. c. 6. s. 5 & 6. Ir.

Bond to be taken from all plaintiffs in replevin in inferior courts.

To prevent vexatious replevins of distresses taken for rent, the 11 Geo. 2. c. 19. s. 23. Eng. provides, that all sheriffs, and other officers having authority to grant replevins, shall in every replevin of a distress for rent, take in their own names, from the plaintiff, and 2 responsible persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one witness, or more, not interested in the distress, which oath the person granting the replevin is to administer) and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods distrained in case a return shall be awarded, before any deliverance be made of the distress: And such sheriff, &c. shall at the request and costs of the avowant, or person making consuance, assign such bond to the avowant, &c. by indorsing the same, and attesting it under his hand and seal, in the presence of 2 witnesses; which may be done without stamp, provided the assignment so indorsed be duly stamped before action brought thereon; and if the bond be forfeited, the avowant, &c. may bring an action and recover thereon in his own name; and the court where such action shall be brought may, by a rule, give relief to the parties upon such bond; and such rule shall have the effect of a defeazance to such bond. The 36 Geo. 3. c. 38. Ir. contains a provision precisely similar. And the 8 Geo. 1. c. 6. s. 5 & 6. Ir. previously provided, that all seneschals, judges, or officers of inferior courts, having power to grant replevins, should take, in their names, from the plaintiffs, a bond with sufficient sureties for prosecuting of the suit, and also for returning of the goods so replevied, if a return be awarded, before they make deliverance of the distress. And that such seneschals, &c. at the request and costs of the avowant, &c. should assign to the avowant, &c. such bond, by indorsing the same under their hands and seals; for which 6*d.* should be paid; and if such bond should be forfeited, the avowant, &c. might bring an action in his own name thereupon.

With

With respect to the pleadings in replevin: The *Avowry may be made without naming the tenant.* 21 Hen. 8. c. 19. s. 1 & 2. Eng. recites, that persons by fines, &c. and secret feoffments, and leases made by their tenants to persons unknown, have been put from the knowledge of their tenants, upon whom they should make their avowries for their rents, &c.; and therefore provides, that wheresoever lands, &c. be holden by rents, customs, or services, if the lords distrain upon the same lands, &c. for such rents, &c. and replevin be sued, the lord may avow, or his bailiff or servant make conusance, or justify such distress upon the same, as in lands, &c. within his fee or seignior, alleging in the said avowry, &c. the same lands, &c. to be holden of him without naming of any person certain to be tenant of the same, and without making avowry, &c. upon any person certain: And in like manner upon writ of second deliverance. And by s. 4. the said plaintiffs and defendants in writs of *replegiare* or second deliverance, shall have like pleas, and like aid-prayers (pleas of disclaimer only excepted) as though the avowry, &c. had been after the order of the common law. *Like pleas and aid-prayers as at common law.* And by s. 5. such persons as by common law may join to the plaintiffs or defendants in *replegiare*, or second deliverance, as well without process as by process, shall join unto the said plaintiffs or defendants, and have like pleas and advantages (disclaimer only excepted) as they might have done by the common law. *And like joinder in aid.* The 33 Hen. 8. st. 1. c. 7. Ir. is a transcript of this statute. *33 Hen. 8. st. 1. c. 7. Ir.* The 11 Geo. 2. c. 19. s. 22. Eng. further provides, that all defendants in replevin may avow, or make conusance generally, that the plaintiff in replevin, or other tenant of the lands or tenements whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for incurred, which rent was then and still remains due; or that the place where the distress was taken was a parcel of such certain tenements held of such lordship, honor, or manor, for which tenements the rent, relief, heriot, or other service distrained for, was at the time of such distress, and still remains due; without further setting forth the grant, tenure, demise, or title of

Double costs. of such landlord, lessor, or owner of such manor; and if the plaintiff in such action shall become nonsuit, discontinue, or have judgment against him, the defendant shall recover double costs. And the 25 Geo. 2. c. 13. s. 4. Ir. also provides, that defendants in replevin may avow, or make conusance generally, that the plaintiff in replevin, or other tenant of the lands, &c. whereon the distress was made, enjoyed the same under a grant or demise, or article, minute, or contract in writing, at such a certain rent, during the time wherein the rent distrained for incurred, which rent was then and still remains due, without further setting forth the grant, tenure, or demise, or title of such landlord, lessor, or owner of such lands, &c.; and it shall be no objection to any such article, &c. that the same doth not contain an actual demise; and if the plaintiff in such action shall become nonsuit, discontinue, or have judgment against him, the defendant shall recover double costs.

The avowant shall have damages and costs.

7 Hen. 8. c. 4. s. 3. Eng.

21 Hen. 8. c. 19. s. 3. Eng.

33 Hen. 8. st. 1. c. 7. Ir.

17 Car. 2. c. 7. Eng.

Proceeding where plaintiff nonsuit before issue joined:

“At Dublin, or other courts of record,” in 7 W. 3. c. 22. Ir.

By the 7 Hen. 8. c. 4. s. 3. Eng. and 21 Hen. 8. c. 19. s. 3. Eng. every avowant, and other person, that makes avowry or conusance, or justifies as baily or servant, in any *replegiare* or second deliverance, for rent, custom, service, or for damage *feasant*, if the avowry, &c. be found for them, or the plaintiffs be nonsuit, or otherwise barred, they shall recover their damages and costs. And the 33 Hen. 8. st. 1. c. 7. Ir. contains the same provision. The 17 Car. 2. c. 7. Eng. further provides, that when any plaintiff in replevin shall be nonsuit before issue joined, in any such suit removed or depending in the king's courts [*at Westminster], the defendant making a suggestion in nature of an avowry or conusance for such rent, to ascertain the court of the cause of distress, the court, upon his prayer, shall award a writ to the sheriff, to inquire by the oaths of 12 men, touching the sum in arrear at the time of such distress taken, and the value of the goods distrained; and, thereupon, notice of 15 days shall be given to the plaintiff, or his attorney, of the sitting of such inquiry; and upon the return of such inquiry, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the

the goods distrained shall amount unto that value; and in case they shall not, then so much as the value of said goods shall amount unto, together with his full costs of suit; and shall have execution thereon by *feri facias*, *elegit*, or otherwise. And in case such plaintiff shall be nonsuit, after conusance or avowry made, and issue joined, or if the verdict shall be given against such plaintiff, then the jurors shall, at the prayer of the defendant, inquire concerning the arrears, and the value of the goods distrained; and thereupon the avowant, or he that makes conusance, shall have judgment for such arrearages, or so much thereof as the goods distrained amount to, together with his full costs, &c. And by s. 3. if judgment, in any of the courts aforesaid, be given upon demurrer for the avowant, or him that maketh conusance for rent, the court shall, at the prayer of the defendant, award a writ to inquire of the value of such distress; and upon the return thereof judgment shall be given for the avowant, &c. for the arrears alleged to be behind in such avowry, &c. if the goods distrained shall amount to that value; and in case they shall not, then for so much as the goods amount unto, together with full costs. And by s. 4. in all cases aforesaid, where the value of the cattle distrained shall not be found to the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may, from time to time, distrain again for the residue of the arrears. The 7 W. 3. c. 22. Ir. contains similar clauses:

Or after issue joined.

s. 3.

Judgment upon demurrer for the avowant.

s. 4.

Proviso.

7 W. 3. c. 22. Ir.

II. Next as to the injuries arising from the *breach of contracts express and implied*: The 32 Hen. 8. c. 34. Eng. recites, that by the common law no stranger to any covenant, action, or condition, could take advantage of the same, but only such as were parties or privies thereunto; and therefore enacts, that all persons being grantees or assignees of any lands, &c. to or by the king or other person, and their heirs, executors, successors, and assigns, shall have like advantages against the lessees, their executors, administrators and assigns, by entry for non payment of the rent, or for waste, or other forfeiture; and also shall have like benefit and remedies

Grantees of reversions may take advantage of conditions.

32 Hen. 8. c. 34. Eng.

Lessees may have like remedy against grantees of reversions, as against grantors.

*10 Car. 1. st. 2. c. 4. Ir.
11 Ann. c. 2. s. 6. Ir.*

Assignees liable to the covenants of lessees.

What parol promises, &c. are void.

*29 Car. 2. c. 3. s. 4. Eng.
7 W. 3. c. 12. s. 2. Ir.*

Upon every statute made for the remedy of any mischief, action lies.

medies by action only, for not performing of other conditions, covenants, or agreements, contained in the indentures of their leases, demises, or grants, against the said lessees, &c. as the lessors or grantors, or their heirs or successors, might have had. And by s. 2. all lessees and grantees of lands, &c. for term of years, life or lives, their executors, administrators, and assigns, shall have like action and remedy against every person, &c. which shall have any grant of the reversion of the same lands, &c. or any parcel thereof, for any condition, covenant, or agreement, contained in the indentures of lease, as they might have had against the lessors or grantors: all recoveries in value by reason of any warranty in deed or in law, by voucher or otherwise, only excepted. The 10 Car. 1. st. 2. c. 4. Ir. is the corresponding statute in Ireland. And the 11 Ann. c. 2. s. 6. Ir. further provides, that every person who shall take any assignment of the residue of any term for years, or life or lives; their executors or administrators, shall be liable to all the covenants whereunto the lessees, their executors, &c. were liable.

The statute of frauds 29 Car. 2. c. 3. s. 4. Eng. provides in respect to promises, that no action shall be brought whereby to charge any executor or administrator; upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, &c. or any interest in or concerning them; or upon any agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him lawfully authorized. And the same clause is contained in the 7 W. 3. c. 12. Ir.

As to actions upon statutes: (which are referred by Sir W. Blackstone to the head of implied contracts) it is provided

provided and declared by the 36 Edw. 3. st. 1. c. 9. E. & I. 36 Edw. 3. st. 1. c. 9. E. & I.

that if any man feeleth himself grieved contrary to any article in any statute; and will come to the chancery and complain, he shall there have remedy by force of the said statute, (viz. by original writ out of chancery.) By

the 4 Hen. 7. c. 20. E. & I. if any person sue with good faith any action popular, and the defendant plead a recovery in bar, or that the same defendant barred such plaintiff in such action, the plaintiff may aver that 4 Hen. 7. c. 20. E. & I.

the recovery was by covin, or that he was barred by covin; which if found, the plaintiff with good faith shall have recovery and execution. And in every such action popular wherein the defendant shall be attainted of covin as aforesaid, the same defendant shall have imprisonment 2 years by *capias* and outlawry; and that as well at the king's suit, as of every other. And no other release to such party shall be available. Provided, that no plaintiff shall be received to aver covin in action popular where the point of the action, or else the covin or collusion, has been tried. By the 18 Eliz. c. 5. Eng. every 18 Eliz. c. 5. s. 1. Eng.

informer upon any penal statute shall exhibit his suit in proper person, and pursue only by himself, or by his attorney in court. And none shall pursue but by information or original action; and upon every such information a note shall be made of the day, month, and year, of the exhibiting thereof in any office; to be of record from that time and not before. And no process shall be sued out until the information be exhibited; upon which process shall be indorsed, the party's name that pursueth, and the statute upon which the information is grounded. And every clerk making out process contrary shall forfeit 40s. one half to the crown and the other to the party against whom such process shall be awarded, to be recovered by action of debt, &c. in any court of record. And by s. 2. no jury shall be compelled to appear in the courts at Westminster for the trial of any issue in any such suit upon any penal law, for any offence committed above 30 miles from Westminster, except where the attorney general, for cause, shall require the same to be tried at bar; which request shall be noted on the *distringas*

Actions popular to be sued with good faith.

Mode of proceeding upon penal statutes.

s. 2.

Where such issues shall be tried.

gus

- Costs to defendant.* s. 3. *gas.* And by s. 3. if any informer or plaintiff shall willingly delay his suit, discontinue, or be nonsuit, or shall have verdict or judgment against him, he shall pay to the defendant his costs, &c. Provided (s. 5.) that any person may sue upon the statutes against maintenance, champerty, buying of titles, or embracery, as before the making of this act. And by s. 6. this act shall not restrain any person, &c. to whom any forfeiture, penalty, or suit, is specially limited by virtue of any statute, and not generally to any person that will sue, but every such person, &c. may sue as if this act were never made. And provided (s. 7.) that this act shall not extend to any such officers of record as heretofore used to exhibit informations or sue upon penal laws, nor to any officers informing or pursuing for matters only concerning their offices.
- Proviso.* s. 4. By the 29 Eliz. c. 5. s. 21. Eng. if any person shall be sued or informed against upon any penal law, in any of the courts of K. B. C. B. or Exc. where such person is bailable by law, or where by the leave of the court such person may appear by attorney; such person so impleaded or sued, shall and may, at the time contained in the first process served for his appearance, appear by attorney of the same court where the process is returnable, and not be urged to personal appearance, or to put in bail for the answering of such suit. But by the 31 Eliz. c. 10. s. 20. Eng. this provision of the 29 Eliz. shall extend only to natural born subjects, and to persons made free denizens, and to no others. By the 31 Eliz. c. 5. s. 1. Eng. no person, other than the party grieved, shall be received to inform or sue upon any penal statute, that hath been, for any misdemeanor, by any court ordered not to pursue any suit upon any penal statute. By s. 2. the offence against any penal statute shall not be laid to be done in any other county but where it was done: and the defendant may traverse that the offence was committed in such county, which being tried for the defendant, or if the plaintiff be thereupon nonsuit, he shall be barred in such action, &c. Provided (s. 3.) that this act shall not extend to such officers of record as have in respect of their offices heretofore used to exhibit informations, &c.
- The defendant in suits upon penal statutes may appear by attorney.* 29 Eliz. c. 5. s. 21. Eng.
- Exception as to aliens.* 31 Eliz. c. 10. s. 20. Eng.
- None restrained by order of court to be informer.* 31 Eliz. c. 5. s. 1. Eng.
- Informations, &c. to be brought in proper county.* s. 2.
- Proviso as to officers.* s. 3.

&c.; nor by s. 4. to any declaration or information concerning champerty, buying of titles, or extortion; offences against the 1 Eliz. c. 11. & c. 20.; or for the defrauding the crown of any custom, tonnage, &c.; or for corrupt usury; or for ingrossing, regrating, or forestalling; where the penalty shall be to the value of £20.: but every such offence may be laid in any county. By s. 4. *Exceptions as to certain informations.*

s. 5. all actions, informations, &c. brought upon any penal statute, whereby the forfeiture is limited to the crown, shall be brought within 2 years after the offence committed; where limited to the crown and prosecutor, then within one year, and in default thereof, then to be brought for the crown at any time within 2 years after that year ended; and if any suit against any penal statute (except the statute of tillage) shall be brought after the time limited, the same shall be void. Provided (s. 6.) *Limitation for penal actions.*

s. 6. that where any action, &c. is limited to be brought within a shorter time, it shall be brought within the time limited by such statute. By s. 7. all suits for using any unlawful game, or for using any art or mystery without being brought up in it, shall be prosecuted at the general quarter sessions, or assizes, of the county within which the offence was committed, or in the leet. None of these statutes of queen Elizabeth have been adopted or followed in Ireland: save that the 2 Geo. 1. c. 20. s. 3. & 4. Ir. *Certain penal actions to be prosecuted at assizes or sessions.*

s. 3 & 4. Ir. prescribes the same limitation for actions and informations, &c. upon penal statutes, as contained in the 31 Eliz. c. 5. s. 5 & 6. *supra*. And this statute (2 Geo. 1. c. 20.) therefore supersedes the 28 Hen. 8. c. 21. Ir. *2 Geo. 1. c. 20. s. 3 & 4. Ir.*

Ir. which prescribed a different limitation, save so far as it provides, that where any action, &c. is given by any statute to such as will sue *only for himself*, such action, &c. shall be commenced within a year after the offence. By the 21 Jac. 1. c. 4. s. 1. Eng. all offences against penal statutes for which any common informer may ground any popular action, suit, or information, before justices of assize, or *nisi prius*, or general gaol delivery, or of *oyer and terminer*, or justices of peace in their sessions, shall be sued and determined by action, &c. before such justices of assize, &c. of the county, &c. wherein every such offence shall be committed; *Limitation where action given to informer suing for himself.*

s. 1. Eng. *Actions, &c. upon penal statutes where tried.*

Process in such actions, &c. committed; and the like process in such actions, &c. shall be as in actions of trespass, *vi et armis*, at common law; and all actions, &c. to be commenced, &c. by the attorney general, or by any officer, or by any common informer, or other person, in any of his majesty's courts at [*Westminster,] concerning the offences aforesaid, shall be void. And by s. 2. in all informations, complaints, and declarations, &c. on penal statutes, the offence shall be laid in the county where the offence was committed, and if the defendant plead that he oweth nothing, or not guilty, and the plaintiff, &c. shall not prove that the offence was committed in that county, he shall be found not guilty.

Informations, &c. laid in proper county. By s. 3. no officer shall receive, file, or enter of record, any declaration, &c. on the said penal statutes, which by this act are to be determined in their proper counties, until the informer or relator hath taken an oath before a judge of the court, that the offence was not committed in any other county than where by the declaration, &c. it is supposed to have been committed, and that he believes the offence was committed within a year before such suit, within said county; the same oath to be entered of record: And by s. 4. the defendant to such actions, &c. may plead the general issue, and give the special matter in evidence. By s. 5. this act shall not extend to actions and suits, &c. concerning [*popish recusancy, or] maintenance, champerty, or buying of titles; or the king's customs, or transporting gold or silver, or munition, or wool, woollfells, or leather. The 10 & 11 Car. 1. c. 11. Ir. contains similar provisions.

Oath required of informer.

Pleading in such actions, &c.

Offences excepted.

10 & 11 Car. 1. c. 11. Ir.

Writ of account against bailiffs. With respect to the writ of account: it was founded upon the 52 Hen. 3. c. 23. E. & I. which enacts, that if bailiffs withdraw themselves, and have no lands, &c. where- by they may be distrained, they shall be attached by their bodies so that the sheriff shall make them account. But another mode of proceeding is chalked out by the 13 Edw. 1. st. 1. c. 11. E. & I. which enacts concerning servants, bailiffs, chamberlains, and all receivers which are

*This clause of the 10 & 11 Car. 1. c. 11. Ir. does not except informations, &c. concerning recusancy, but does those grounded on the 23 Hen. 6. c. 9. Eng. against sheriffs for not making deputies.

are accountable; when the master assigns them auditors Auditors may commit accountants to prison. to take their accounts, and they be found in arrear, their bodies shall be arrested, and by the testimony of the auditors they shall be sent unto gaol, and imprisoned in iron until they have satisfied their masters: nevertheless, if any such person complain that the auditors have The accountant's relief, grieved him, and find mainprize that will undertake to bring him before the barons of the exchequer, to them he shall be delivered: And the sheriff shall give knowledge unto his master, that he be before the barons at a certain day, with the rolls and tallies by which he made his account, and in the presence of the barons, or such auditors as they shall assign, the account shall be rehearsed, and justice done to the parties, so that if he be found in arrear he shall be committed to the fleet. And if he fly, he shall be distrained to come before the justices to make his account, if he have whereof to be distrained: and when he cometh to the court, auditors shall be assigned, before whom if he be found in arrear, and cannot pay, he shall be committed. And if it be testified by the sheriff that he is not found, *exigents* shall go against An exigent against an accountant. him from county to county, until he be outlawed; and such a prisoner shall not be replevisable. And the sheriff, or gaoler, shall take heed that he do not suffer him to go at large without the assent of his master; and if he do he shall answer to the master the damages; and the master shall have his recovery thereof by a writ of debt: and if the gaoler have not wherewithal, his superior shall answer. The statutes which gave the action of account to executors, and executors of executors, have been already referred to (vol. 1. p. 661.): And by the 4 Ann. 4 Ann. c. 16. s. 27. Eng. 6 Ann. c. 10. s. 23. Ir. c. 16. s. 27. Eng. actions of account may be maintained against the executors and administrators of every guardian, bailiff, and receiver; and also by one joint-tenant, Account may be against executors, &c. of guardian, &c. and tenant in common, his executors and administrators, against the other as bailiff, for receiving more than his share, and against the executor and administrator of such And by one joint-tenant, &c. joint-tenant, &c.; and the auditors appointed by the court shall administer an oath, and examine the parties; and for their trouble in auditing said account have such allowance as the court shall adjudge reasonable, to be paid

paid by the party on whose side the balance shall be. Which provision is also contained in the 6 Ann. c. 10. s. 23. Ir.

No action against any person in whose house, &c. any fire accidentally begins.

6 Ann. c. 31. s. 6. & 7. Eng.
2 Geo. 1. c. 5. s. 1 & 2. Ir.

7 Geo. 2. c. 15. Eng.

26 Geo. 3. c. 86. s. 1. Eng.

Ship-owners how far liable for robbery, &c. of goods on board.

Or for loss by fire on board.

Not liable unless declaration be made of the value, at the time of shipping.

One species of the action upon the case which was founded on the general custom of the realm, is controlled by the 6 Ann. c. 31. s. 6. Eng. which provides, that no action, suit, or process, shall be had or maintained against any person in whose house or chamber any fire shall accidentally begin, or any recompense be made by such person for any damage occasioned thereby. Provided (s. 7.) that nothing in this act shall make void any contract or agreement made between landlord and tenant. And the 2 Geo. 1. c. 5. Ir. contains clauses precisely similar. To this head also may be referred the 7 Geo. 2. c. 15. Eng. which as amended by the 26 Geo. 3. c. 86. Eng. enacts, that no owner of any ship or vessel shall be liable to make good any loss or damage by reason of any robbery, embezzlement, secreting, or making away with any gold, silver, diamonds, jewels, precious stones, or other goods or merchandize, which shall be shipped on board any ship, &c. or for any act or forfeiture done or occasioned without the knowledge of such owner, further than the value of the ship, &c. with all her appurtenances, and the full amount of the freight for the voyage, wherein such robbery, &c. shall be made, &c. although the master or mariners shall not be concerned in, or privy to such robbery, &c. And by s. 2. no owner of any ship, &c. shall be subject to answer for any loss or damage which may happen to goods shipped on board such ship, by reason of any fire happening on board said ship. By s. 3. no master of any ship, &c. shall be subject to answer for any loss or damage which may happen to any gold, silver, diamonds, watches, jewels, or precious stones, put on board such ship, by reason of any robbery, &c. unless the owner or shipper thereof shall, at the time of shipping the same, insert in his bill of lading, or otherwise declare in writing to the master or owner, the true nature, quality, and value of such gold, &c. And by s. 4. if several freighters, or proprietors of any such gold, &c. or other goods, shall suffer any loss or damage by

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any of the means aforesaid, in the same voyage, (fire only excepted;) and the value of the ship, &c. with her appurtenances, and the amount of the freight during such voyage, shall not be sufficient to make full compensation to all of them; such freighters, &c. shall receive their satisfaction thereout in average, in proportion to their losses: And in such case it shall be lawful for such freighters, &c. or for the owners of such ship, &c. to exhibit a bill in any court of equity for a discovery of the total amount of such losses, and also of the value of such ship, appurtenances, and freight, and for an equal distribution thereof amongst such freighters, &c. in proportion to their losses, according to equity. But if such bill shall be exhibited by the part-owners of such ship, &c. the plaintiffs shall annex an affidavit to such bill, that they do not collude with any of the defendants; and shall thereby offer to pay the value of such ship, appurtenances, and freight, as such court shall direct; and such court shall thereupon take such method for ascertaining such value as to them shall seem just, and shall direct the payment thereof in like manner as is now used in cases of bills of interpleader. But it is provided (s. 5.) that nothing in this act shall impeach, lessen, or discharge, any remedy which any person shall have against the master and mariners of such ship, &c. for any embezzlement, &c. or on account of any fraud, abuse, or malversation, of such master and mariners. No similar statute has been passed in Ireland. The 14 & 15 Car. 2. c. 3. Ir. is to be referred to this head of implied contracts, or action upon the case founded on the custom of the realm: this statute recites, that hostlers, inn-holders, and others, who take upon themselves to keep inns, or stables, or both, are much more negligent because it is conceived that they are not answerable for any horses which are turned by them to grass, as for those which they keep within stables; and therefore enacts, that every hostler, inn-holder, or other who shall take upon them the charge and keeping of horses, geldings, or mares, in stables or out-grounds, shall be answerable for such horses, &c.

If produce of ships, &c. be insufficient to answer losses, it is to be proportionally divided among the losers.

Freighters or owners may exhibit bill for discovering the amount of losses, &c.

s. 5.

Proviso.

14 & 15 Car. 2.
c. 3. Ir.

Inn-holders, &c. answerable for horses turned to grass.

CHAP. X.

Of Dispossession, or Ouster of the Freehold.

§ 1.

Descent not to toll entry.

32 Hen. 8. c. 33. Eng.

10 Car. 1. st. 2. c. 7. Ir.

Unless disseisor in peaceable possession 5 years before his death.

21 Jac. 1. c. 16. s. 1 & 2. Eng.

10 Car. 1. st. 2. c. 6. s. 12 & 13. Ir.

*Entry to be within 20 years.**Or within 10 years after disability.*

WITH respect to the remedy by *entry* for the injury of ouster, the 32 Hen. 8. c. 33. Eng. recites, that divers persons without title entered into lands, &c. and disseised the rightful owners and possessors thereof, and being so seised by disseisin, have thereof died seised, by reason whereof the disseisee, or such persons as before such descent might have lawfully entered into such lands, were thereby excluded of their entry, and put to their action; and therefore enacts, that the dying seised of any such disseisor, shall not be deemed any such descent in law, to toll or take away the entry of any person, or his heirs, who at the time of the descent had good title of entry into said lands, except such disseisor hath had the peaceable possession of such lands, &c. by the space of 5 years next after such disseisin, without entry or continual claim by such person having lawful title thereunto. Which is also the provision of the 10 Car. 1. st. 2. c. 7. Ir. But on the other hand the 21 Jac. 1. c. 16. s. 1. & 2. Eng. and 10 Car. 1. st. 2. c. 6. s. 12. & 13. Ir. provide, that no person shall make any entry into lands, &c. but within 20 years next after his right or title shall first descend or accrue to the same. Provided, that if any person that shall [*be entitled to such writ or] have such right or title of entry, shall be, at the time of such right first accrued, within the age of 21 years, *feme covert*, *non compos mentis*, imprisoned, or beyond the seas, such

* These words are not in the 10 Car. 1. st. 2. c. 6. Ir. but occur in the 21 Jac. 1. c. 16. s. 2. Eng. and refer to the writ of *formedon* mentioned in s. 1. *vid. post.*

person and his heirs may bring action, or make entry, within 10 years after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into the realm, or death.

The statutes 5 Ric. 2. st. 1. c. 8. E. & I. and 15 Ric. 2. c. 2. E. & I. which punish forcible entries as offences of a criminal nature, are reserved for another place: But those clauses of the 8 Hen. 6. c. 9. E. & I. 31 Eliz. c. 11. Eng. and 21 Jac. 1. c. 15. Eng. which provide the remedy of restitution for the injuries of forcible entry, and detainer, are proper to be here stated. This statute enacts, (s. 2.) that where any doth make forcible entry into lands, or other possessions, or them hold forcibly, after complaint made to the justices of peace of the county, or one of them, the justices, &c. within a convenable time shall cause the statute (15 Ric. 2. c. 2.) to be executed at the costs of the party grieved. And by s. 3. whether such persons making such entries be present, or departed before the coming of the justices, nevertheless the justices in some town next the tenement, or other convenient place, shall have power to inquire by the people of the county, as well of them that make such forcible entries into lands, &c. as of them which the same hold with force. And if it be found before them that any doth contrary to this statute, the justices shall cause the said lands, &c. to be re-seized, and put the party so put out in full possession. And if any person after such entry make a feoffment or other discontinuance, to any lord or other person, to have maintenance, or to defraud the possessor of his recovery, if after, in assize or other action, by inquiry the same feoffments, &c. be proved to be made for maintenance, such feoffment, &c. shall be void. By s. 4. when the justices make such inquiries they shall cause their precepts to be directed to the sheriff, commanding him to cause to come before them sufficient and indifferent persons dwelling next about the lands so entered, to inquire of such entries, whereof every man impanelled shall have lands of the yearly value of 40s. And the sheriffs shall return issues upon them, at the day of the first precept returnable—20s. and at the 2d day—40s. at the 3d time—100s.

Jurisdiction of justices of peace in cases of forcible entry and detainer.

8 Hen. 6. c. 9. E. & I.

s. 2.

s. 3.

s. 4.

Inquiry by sheriffs.

and

and every day after the double. And if any sheriff or bailiff make not execution duly of the said precepts, he shall forfeit to the king £20. and moreover make fine and ransom. And by s. 5. as well the justices aforesaid, as the justices of assizes, shall have power to hear and determine such defaults of the sheriffs and bailiffs, as well by bill at the suit of the party grieved for himself, as for the king by indictment. And if the sheriff or bailiff be attainted by indictment, or by bill, he who sueth shall have one moiety of the £20. together with his costs; and the same process shall be made against such persons indicted or sued by bill, as against persons indicted or sued by writ of trespass with force and arms. And by s. 6. mayors, or justices of peace, sheriffs and bailiffs, of cities or boroughs having franchise, shall have like power to inquire of such entries and other articles, as the justices of peace and sheriffs in counties. But this act provides (s. 7.) that they which keep their possessions with force in lands or tenements, whereof they, or their ancestors, or they whose estate they have in such lands, &c. have continued their possessions 3 years, shall not be endamaged by this statute. The 31 Eliz. c. 11. Eng. also provides, that no restitution upon any indictment of forcible entry, or holding with force, shall be made, if the persons indicted had the occupation, or been in quiet possession, 3 years next before the day of such indictment found, and their estate therein not ended, which the party indicted may allege for stay of restitution; and if the other traverse the same, and the allegation be tried against the party indicted, he shall pay costs. By the 21 Jac. 1. c. 15. Eng. such judges or justices of peace as are enabled upon inquiry to give restitution of possession to tenants of freehold of their lands withholden by force, shall have like authority (upon indictment of forcible entry or withholding before them found) to give like restitution of possession to tenants for term of years, tenants by copy of court-roll, tenants by *elegit*, statute-merchant and staple. The 10 Car. 1. st. 3. c. 13. Ir. has incorporated the 31 Eliz. c. 11. Eng. and 21 Jac. 1. c. 15. Eng. and contains this additional provision, that every justice of assize in their circuits shall have like power

s. 5.

Penalty for default.

s. 6.

Mayors, &c. in cities, &c. to have like jurisdiction.

s. 7.

Proviso as to possessions for 3 years.

31 Eliz. c. 11. Eng.

No restitution upon indictments of forcible entry, or where possession for 3 years.

21 Jac. 1. c. 15. Eng.

Restitution of possession to tenants for years, &c.

10 Car. 1. st. 3. c. 13. Ir.

power to inquire, &c. of all forcible entries, and forcible holding, and other offences, as well against the 8 Hen. 6. *supra*, as against this statute, and to award restitution of possession in all cases, as any other judge, or justice of the peace.

The writ of entry *sur disseisin* in the *post* was framed by virtue of the 52 Hen. 3. c. 29. E. & I. which provides, that if those alienations of which a writ of entry was wont

Writ of entry in the post.

52 Hen. 3. c. 29. E. & I.

to be granted, be made by so many degrees that the writ cannot be had in the form before used, the plaintiff shall have a writ to recover his seisin without mention of the degrees, to be provided by the king's council. Another species of the writ of entry lies for guardians, by force of the 13 Edw. 1. st. 1. c. 7. E. & I. which provides, that

13 Edw. 1. st. 1. c. 7. E. & I.

a writ of admeasurement of dower shall be granted to a guardian; neither shall the heir when of full age be barred by the suit of the guardian, but he may admeasure the dower after: And in this writ as well as in the writ of

Writ of admeasurement of dower granted to guardians.

admeasurement of pasture, more speedy process shall be than hitherto; so that when it is come to the great distress, days shall be given within which two counties may be holden, at which open proclamation shall be made, that the defendant come in at the day, at which if he comes in, the plea shall go forward; and if he do not come, and the proclamation be testified by the sheriff, upon the default they shall proceed to make admeasurement.

The 6 Edw. 1. c. 7. E. & I. which gives the writ of entry *in casu proviso* upon alienations by tenant in dower has been

6 Edw. 1. c. 7. E. & I.

already stated (*ante* v. 1. p. 462.) And another writ of the like nature, called a writ of entry *in consimili casu*, was framed (for tenant by the curtesy, or for life, or for another's

Writ of entry in casu proviso.

life) by virtue of the 13 Edw. 1. st. 1. c. 24. E. & I. which provides, that where in one case a writ is granted,

13 Edw. 1. st. 1. c. 24. E. & I.

in a like case also needing a like remedy, a writ shall be made. With respect to the writ of *cui in vita*, it was provided by the 13 Edw. 1. st. 1. c. 3. E. & I. that when

Writ of entry in consimili casu.

13 Edw. 1. st. 1. c. 3. E. & I.

a man loseth by default a tenement which is the right of his wife, the woman after the death of her husband shall

Writ of cui in vita.

have recovery by writ of entry *cui ipsa in vita sua contradicere non potuit*: if against the demand of the woman

the

the tenant except, that he had entry by judgment, if it be prayed, he shall be compelled further to shew his right, according to the form of the writ that he purchased before against the husband and wife. If a man will not defend the right of his wife, and the wife before judgment comes ready to answer the demandant, and defend her right, she shall be admitted. In the same manner if tenant in dower, by the curtesy, or otherwise for term of life, or by gift in which a reversion is reserved, shall make default, or will render, the heirs, and they to whom the reversion belongeth, shall be admitted to answer, if they come before judgment. And if by default, or render, judgment be given, they shall have after the death of such tenants recovery by writ of entry, in which the same process shall be observed as above.

§ 2.

Same points inquired in actions ancestrel, as in assize of mort d'ancestor.

13 Edw. 1. st. 1. c. 20. E. & I.

13 Edw. 1. st. 1. c. 25. E. & I.

Of what things an assize will lie.

II. As to the writ of assize considered as a remedy for the injury of abatement: The 13 Edw. 1. st. 1. c. 20. E. & I. provides, that in writs of *cosinage*, *aiel* and *besaiel*, the answer of the tenant, that the demandant is not the next heir of the ancestor on whose death the tenement is demanded, shall be admitted as well as in plea of *mort d'ancestor*. And as to the assize of *novel disseisin*: By the 13 Edw. 1. st. 1. c. 25. E. & I. for estovers of wood, profits to be taken in woods, corody, delivery of corn, or other victuals or necessities, to be received yearly in a certain place; toll, tronage, passage, pontage, and the like, to be taken in certain places; keeping of parks, woods, forests, chases, warrens, gates, and other bailiwicks and offices in fee, an assize of *novel disseisin* shall lie; and in such cases the writ shall be (as in other cases) *de libero tenemento*. And it shall also lie for common of turf-land, fishing, and such like common, appendant to freehold, or by special deed, (as heretofore held place for common of pasture) provided the estate therein be at least for life. If any, holding for years, or in ward, alien the fee, remedy shall be had by this writ, and both the feoffors and feoffees shall be had for disseisors; so that during the life of any of them the said writ shall hold place, and if they die the remedy shall be by writ of entry. And the giving this writ in new cases shall

shall not diminish the force thereof in those wherein it had force before: And the remedy shall be also had thereby in case where one feedeth in the several of another. And in this suit if the defendant fail to make good the exception which he propounds, (as that an assize of the same land passed between the same parties, &c.) he shall be adjudged a disseisor, without taking the assize, and shall give to the plaintiff double damages, and shall suffer a year's imprisonment. And if the exception be alleged by a bailiff, the taking of the assize shall not be thereby delayed, nor the judgment. Howbeit if the master of such bailiff afterwards offer to prove by record to the court, that another time an assize passed between the same parties of the same land, or that the plaintiff at another time did withdraw his suit in a like writ, or that a plea hangeth by a writ of a higher nature, he shall have a *venire facias* to produce such record; and if the justices see that the record would have been available before judgment as a bar, the plaintiff shall be warned to appear at a certain day, and the defendant shall then have again his seisin and damages (if he paid any) which shall be restored to him double, and the plaintiff shall be punished by imprisonment at the discretion of the justices. In like manner shall the justices proceed, in case the defendant against whom an assize hath passed in his absence, sheweth deeds or releases which were not before the jury, or mentioned in the pleading, and if the plaintiff purchased an assize contrary to his own deed, he shall be punished as aforesaid. And the sheriff shall not take an ox of the disseisee but of the disseisor only; and but one ox though there be many disseisors named in the writ; and that ox shall not exceed 5s. in value. By the 3 Edw. 1. c. 24. E. & I. no escheator, sheriff, or other bailiff of the king, by colour of his office, shall, without special warrant or authority, disseise any man of his freehold; and if any do, it shall be at the election of the disseisee, whether the king by office shall cause it to be amended, or he will sue by writ of *novel disseisin*: And he that is attainted shall pay double damages, and shall be amerced. And by the 4 Hen. 4. c. 8. E. & I. if any make forcible entry in his own right, or by way of maintenance, or take

Certificate of assize.

3 Edw. 1. c. 24.
E. & I.

Remedy if an officer of the king do disseise any.

4 Hen. 4. c. 8.
E. & I.

goods

In what cases a special assize is maintainable.

goods after such forcible entry from the possessors of the freehold; if the party grieved, or any other in his name, will make affidavit, that the entry was made in such forcible manner, the chancellor shall grant a special assize, without suing to the king; and if the disseisor shall be attainted thereof, he shall suffer one year's imprisonment, and restore double damages to the party grieved; and if he be convicted by the assize that he hath taken any goods of such disseisees, the justices shall award damages; and in every such special assize shall be named one of the justices of one bench or the other, or the chief baron of the exchequer if he be a man of the law. And the 8 Hen. 6. c. 9. s. 6. E. & I. further provides, that if any person be disseised of lands or tene-

Assize of novel disseisin or trespass against disseisor.

ments in a forcible manner, or put out peaceably, and after holden out with strong hand, or after such entry any feoffment or discontinuance thereof be made, to defraud the right of the possessor, the party grieved shall have assize of *novel disseisin*, or writ of trespass, against such disseisor; and if the party grieved recover, and it be found by verdict, or in other manner, that the defendant entered with force, or after his entry did hold with force, the plaintiff shall recover treble damages, and the defendant shall make fine and ransom to the king.

7 Ric. 2. c. 10. E. & I.

Where an assize shall be taken of rents of lands in divers counties.

By the 7 Ric. 2. c. 10. E. & I. an assize of *novel disseisin* for rents issuing out of lands in divers counties, shall be taken *in confinio comitatus*, as is used for common of pasture in one county, appendant to tenements in ano-

6 Hen. 6. c. 2. E. & I.

Panels in assizes how long to be delivered.

ther. By the 6 Hen. 6. c. 2. E. & I. the panels of special assizes shall be arrayed, and an indented copy thereof delivered by the sheriff to the plaintiffs, tenants, and defendants, 6 days before the sessions, if they demand the same; also bailiffs of franchises shall make their returns thereof to the sheriff 8 days before; upon pain to forfeit each of them, sheriff or bailiff, £40. By

11 Hen. 6. c. 2. E. & I.

the 11 Hen. 6. c. 2. E. & I. in an assize of *novel disseisin*, if the sheriff be named a disseisor by collusion, to the end that the writ may be directed to the coroners, and the assize secretly awarded by the tenant's default; upon the tenant's averment thereof, and if it shall also be found by the

the assize to be so, the justices shall abate the writ, Sheriff named disseisor by collusion. and grievously amerce the plaintiff. And by the 6 Edw. 1. c. 1. E. & I. 6 Edw. 1. c. 1. E. & I. in assize of *novel disseisin*, if the disseisors alien the lands, and have not whereof the damages may be levied, they to whose hands such tenements shall come, shall be charged with the damages, so The alienee of a disseisor shall be charged with damages. that every one answer for his time. Also the disseisee shall recover damages in a writ of entry upon disseisin, against him that is found tenant after the disseisor. [*Also damages shall be awarded where a man recovereth by assize of *mort d'ancestor*, as in assize of *novel disseisin* :] Damages in cosinage, &c. And likewise damages shall be recovered in writs of *cosinage*, *aiel*, and *besaiel*. And by s. 2. the demandant shall s. 2. recover against the tenant the costs of his writ purchased, Costs also given. together with the damages aforesaid. And this act shall hold place in all cases where the party is to recover damages. And every man shall be compelled to render damages, where the land is recovered against him upon his own intrusion or act. And for the punishment of re-disseisins the 20 Hen. 3. c. 3. E. & I. provides, that if any 20 Hen. 3. c. 3. E. & I. be disseised of his freehold, and before the justice in eyre hath recovered seisin by assize, or by the confession of them which did the disseisin, and the disseisee hath had seisin delivered him by the sheriff, if the same disseisors shall again disseise the same plaintiff of the same freehold, and thereof be convict, they shall be taken and kept in prison until the king discharge them by ransom or other mean. And this is the form how such convict persons shall be punished, *viz*: when the plaintiffs come to the court, they shall have the king's writ directed to the sheriff, in which shall be contained the declaration of the disseisin done upon disseisin; and it shall be commanded to the sheriff, that he taking with him the keeper of the pleas of the crown, and other lawful knights, in his proper person shall go unto the land or pasture of which plaint hath been made; and that before them he make by the jurors

* Damages were also given by the 52 Hen. 3. c. 16. E. & I. to the heir who should recover in an assize of *mort d'ancestor* against the lord having the ward of his lands; but this statute seems to have become obsolete upon the abolition of wardship by reason of tenure.

and other lawful men, diligent inquisition thereof; and if they find him disseised again, that they do according to the provision afore mentioned; and if it be found otherwise, the plaintiff shall be amerced, and the other go quit: neither shall the sheriff prosecute any such plaint without command of the king. In the same manner shall be done for them that have recovered their seisin by assize of *mort d'ancestor*; and so it shall be of all lands recovered in the king's courts by inquests, if they be disseised

52 Hen. 3. c. 8. after the first deforceors. The 52 Hen. 3. c. 8. E. & I. E. & I.

Those imprisoned for re-disseisin not delivered without special commandment, &c.

further enacts, that they which be imprisoned for re-disseisin, shall not be delivered without the special command of the king, and shall make fine with the king for their trespass; and if it be found that the sheriff delivereth any contrary to this ordinance, he shall be grievously amerced; and nevertheless, they which are so delivered shall be grievously punished. And by the 13 Edw. 1.

13 Edw. 1. st. 1. c. 26. E. & I.

Who may bring writ of re-disseisin—double damages given.

st. 1. c. 26. E. & I. in writs of redisseisin double damages shall be awarded, and the redisseisors shall not be repleviable by the common writ; and the same writ shall hold place for them that shall recover by default, reddition, or otherwise, without recognition of assizes or juries.

In disseisins of ancestors, assize, &c. to be brought within 50 years.

32 Hen. 8. c. 2. s. 2. Eng.

With respect to the limitation in these possessory actions: the 32 Hen. 8. c. 2. s. 2. Eng. enacts, that no person shall have any assize of *mort d'ancestor*, *cosinage*, *aicl*, writ of entry upon disseisin done to any of his ancestors or predecessors, or any other action possessory upon the possession of his ancestors, &c. of any further seisin, but only of the seisin of his ancestor, &c. within 50 years next before the *teste* of the original of the

In disseisins of demandants—within 30 years.

s. 4. Avowries, &c. for prescriptive rents, within 50 years.

same writ. And by s. 3. no person shall have any action for lands, &c. upon his own seisin, above *30 years before the *teste* of the original writ. And by s. 4. no person shall make any avowry or conusance for any rent, suit, or service, and allege any seisin of his ancestors, &c. or in his own possession, or in the possession of any other whose estate he shall claim to have, above †50 years be-

* "20 years" by the 10 Car. 1. st. 2. c. 6. Ir.

† 40 years is the limitation by the 10 Car. 1. st. 2. c. 6. s. 4. Ir. which follows in this respect Rastell's and other editions of the English statutes.

fore making the avowry or conusance. And by s. 6. if any s. 6.
 person sue any of the said writs, or make any avowry,
 conusance, title, or claim, for any rent, suit, service, or *Bar for default
of seisin within
the time of limi-
tation.*
 other hereditaments, and cannot prove that he or his an-
 cestors, &c. were in actual possession or seisin of the
 same lands, &c. within the years before limited, if the
 same be traversed by the party, after trial therein had,
 such persons shall be barred for ever. And by s. 11. if s. 11.
 any false verdict shall be given in any of the said actions
 or claims, the party aggrieved shall have his attainr in *The party griev-
ed by false ver-
dict may have an
attainr.*
 like manner as heretofore. The 10 Car. 1. st. 2. c. 6. Ir. 10 Car. 1. st. 2.
c. 6. Ir.
 has followed this statute with such deviations as are
 noted in the margin.

III. Next as to the remedies for asserting the *right of* §. 3.
property: The writ of *formedon* in the *descender* is ex- *Formedon in the
descender.*
 pressly granted by the 13 Edw. 1. st. 1. c. 1. E. & I. to 13 Edw. 1. st. 1.
c. 1. E. & I.
 the heir to recover his right of property where there has
 been an alienation by the tenant in tail: But this statute
de donis has been already fully stated *ante* v. 1. p. 446-7.
 By the 21 Jac. 1. c. 16. s. 1. Eng. all writs of *formedon* 21 Jac. 1. c. 16.
s. 1. Eng.
in descender, in remainder, and in reverter, shall be sued
 or brought within 20 years after the title and cause of *Limitation for
writs of forme-
don.*
 action first descended or fallen: which is also the limi-
 tation by the 10 Car. 1. st. 2. c. 6. s. 13. Ir. But the pro-
 viso contained in the 21 Jac. 1. c. 16. s. 2. Eng. *ante* p. 122.
 which allows to persons entitled to such writs, being infants,
 &c. 10 years, after such disability of infancy, &c. re-
 moved, to bring such actions, has not been adopted by
 the 10 Car. 1. st. 2. c. 6. s. 13. Ir. so far as relates to 10 Car. 1. st. 2.
c. 6. s. 13. Ir.
 bringing such writs or actions; this clause (s. 13.) of the
 10 Car. 1. extending only to the *making entry* within 10
 years after such disabilities removed.

The writ of *quod ei deforceat* is given by the 13 Edw. 1. *Remedy for the
owners of parti-
cular estates, af-
ter their lands
recovered against
them by default.*
 st. 1. c. 4. E. & I. which enacts, that where the husband
 being impleaded giveth up the land by covin, and 13 Edw. 1. st. 1.
c. 4. E. & I.
 where the husband loseth the land by default, in both
 cases the woman demanding her dower shall be heard;
 and if it be alleged against her that her husband lost the
 land by judgment, and it be inquired by what judgment,
 and it be found that it was by default, whereunto the te-

nant must answer; then the tenant shall answer further, and shew that he had right in the land, according to the form of the writ purchased against the husband; and if he can shew that the husband had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower; which if he cannot shew, the wife shall recover her dower. And so in these cases, and in the following, viz: when the wife being endowed loseth her dower by default, and tenants in free marriage, by the law of England, or for term of life, or in fee-tail, divers actions concur for such tenants when they demand their land lost by default; for when it is come to that, that such tenants must be compelled to shew their rights, and they cannot answer without them to whom the reversion belongeth, therefore it is granted unto them to vouch to warranty, as if they were tenants, if they have a warranty; and when the warrantor hath warranted, the plea shall pass between him that is seised, and the warrantor, according to the tenor of the writ that the tenant purchased before, and by which he recovered by default. And if the action of such a tenant, which is compelled to shew his right, be moved by a writ of right, though the great assize or battail cannot be joined by the words accustomed, yet it shall be joined by words convenient. And where sometime a woman not having right to demand dower, the heir being within age, doth purchase a writ of dower against a guardian, and the guardian endoweth the woman by favour, or maketh default, or by collusion defendeth the plea faintly, whereby the woman is awarded her dower; the heir, when he cometh to age, shall have an action to demand the seisin of his ancestor against such woman, like as against any other deforceor; yet so that the woman shall have her exception saved against the demandant, to shew that she had right to her dower; which if she can shew, she shall go quit, and retain her dower, and the heir shall be grievously amerced, according to the discretion of the justices; and if not, the heir shall recover his demand. In like manner the woman shall be aided, if the heir, or any other, do implead her

her for her dower, or if she lose her dower by default; in which case the default shall not be so prejudicial to her but that she shall recover her dower, if she have right thereto; and she shall have this writ: *Præcipe A quod juste, &c. reddat B, quæ fuit uxor F, tantam terram cum pertinentiis in C quam clamat esse rationabilem dorem suam, vel de rationabili dote sua, et quod prædictus A ei deforceat, &c.* Writ of quod ei deforceat. And whereas, if a man had lost his land by default, he could not otherwise recover than by a writ of right, which was not maintainable by any that could not claim of mere right, as tenants for term of life, in free marriage, or in tail, in which estates a reversion is reserved; it is provided, that for land in free-marriage lost by default, this writ shall be made: *Præcipe A quod juste, &c. reddat B manerium de D cum pertinentiis, quod clamat esse jus et maritagium suum, et quod A ei injuste deforceat.* Likewise of land for term of life, lost by default, this writ shall be made: *Præcipe A quod juste et sine dilatione, &c. reddat B manerium de D cum pertinentiis, quod clamat tenere ad terminum vitæ suæ, et quod prædictus A ei deforceat.* Likewise: *quod clamat tenere sibi, et hæredibus de corpore suo legitime procreatis, et quod predictus A ei deforceat.*

As to the mere writ of right: the 32 Hen. 8. c. 2. s. 1. Limitation of prescription in a writ of right. Eng. provides, that no person shall have any writ of right, or make any prescription, title, or claim, to any lands, &c. of the possession of his ancestor or predecessor, and declare any further seisin of his ancestor, &c. but within three-score years before the *teste* of the writ, or before the prescription, title, or claim had.* Which 32 Hen. 8. c. 2. s. 1. Eng. 10 Car. 1. st. 2. c. 6. s. 1. Ir. * Vide s. 6 & 11. ante P. 131. provision is also contained in the 10 Car. 1. st. 2. c. 6. Ir. The 8 Geo. 1. c. 4. Ir. may be here referred to, which 8 Geo. 1. c. 4. s. 4. Ir. Irish titles quieted. recites (s. 4.) that by reason of the several rebellions which have been in this kingdom, several records, and many settlements, deeds, and other evidences relating to titles, have been lost or defaced; and therefore enacts, that every person, &c. not already barred, who shall claim any estate, or interest in any lands, &c. of which such person, &c. hath not been in possession within 20 years before 12 Sept. 1721, or shall claim any incumbrance

s. 5 & 6.

s. 7.

brance thereon, shall commence and prosecute some action or suit for the recovery of such lands, &c. within 5 years from the 12th of Sept. aforesaid, or be for ever barred in law or equity. Provided (s. 5 & 6.) that nothing herein shall bar any person, &c. who shall commence and prosecute his action, &c. within 5 years next after his title shall accrue; nor any person who shall be a *feme covert*, or within the age of 21 years, *non compos mentis*, or in prison, or out of the kingdom, or his legal representatives, provided he shall commence and prosecute his action, &c. within 5 years after such disability removed. Saving (by s. 7.) to the king all right to any lands, tenements, rents, hereditaments, mortgages, recognizances, debts, duties, and demands, as if this act had never been made.

CHAP. XI.

Of Dispossession, or Ouster of Chattels real.

§ 3.

Remedy for ouster from estates held by *elegit*;

13Edw. 1. st. 1. c. 18. E. & I.

27Edw. 3. st. 2. c. 9. E. & I.

Statute staple;

23 Hen. 8. c. 6. s. 9. E. & I.

Or recognizance.

WITH respect to *ouster* from estates held by statute, recognizance, or *elegit*. The 13 Edw. 1. st. 1. c. 18. E. & I. expressly provides, that if tenant by *elegit* be put out of the tenement delivered to him by the sheriff, he shall recover by writ of *novel disseisin*, and after by a writ of re-disseisin, if need be. And by the 27 Edw. 3. st. 2. c. 9. E. & I. any person holding an estate by statute staple, shall have an estate of freehold in the lands, and recovery by writ of *novel disseisin* if he be outed. And the 23 Hen. 8. c. 6. s. 9. Eng. also provides, that every person that shall have execution of any lands, &c. upon a recog-

a recognizance (in the nature of a statute staple) acknowledged according to this statute, his executors, &c. being put out or disseised, shall have like remedy in every point as persons having execution upon any statute of the staple.

Next as to ouster from estates for years: the writ of *ejectione firmæ*, or action of trespass in ejectment, is brought for tithes by virtue of the 32 Hen. 8. c. 7. s. 7. Eng. which enacts, that where any persons that shall have any estate of inheritance, freehold, term, right, or interest, in any parsonage, vicarage, portion, pension, tithes, oblations, or other ecclesiastical or spiritual profit, made temporal, or admitted to be in temporal hands by the laws of this realm, shall be disseised, or otherwise put from their lawful inheritance or interest, by any person claiming title to the same; the persons so disseised, &c. their heirs, wives, and such other to whom such injury shall be done, shall have their remedy in the king's temporal courts, or other temporal court, for the recovery of such inheritance or interest, by writs of *præcipe quod reddat*, assize of *novel disseisin*, *mort d'ancestor*, *quod ei deforceat*, writs of dower, or other writs original as the case shall require. Provided (s. 8.) that this act shall not give remedy or suit in the courts temporal, against any person who shall refuse to set out his tithes, or detain his tithes or offerings. The 33 Hen. 8. st. 1. c. 12. Ir. contains corresponding clauses.

§ 2.

Ejectment lies for tithes, &c.

32 Hen. 8. c. 7. s. 7. Eng.

33 Hen. 8. st. 1. c. 12. Ir.

Tenants bound to give notice to landlords of ejectments.

11 Geo. 2. c. 19. s. 12. Eng.

Penalty.

s. 13.

court

Landlord may take defence notwithstanding collusive recovery.

court where such ejectment shall be brought, to suffer the landlord to make himself defendant, by joining with the tenants to whom such declaration shall be delivered, in case they appear; but in case such tenants neglect to appear, judgment shall be signed against the casual ejector; but if the landlord of any part of the lands, &c. shall desire to appear by himself, and consent to enter into the rule that the tenant in possession (if he appeared) ought to have done, the court shall permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector. No statute in Ireland contains any such provision.

Ejectment for non-payment of rent.

4 Geo. 2. c. 28. s. 2. Eng.

The 4 Geo. 2. c. 28. s. 2. Eng. recites, that great inconveniences frequently happen to lessors and landlords, in cases of re-entry for non-payment of rent, by reason of the many niceties that attend re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord must be at the expense and delay of recovering in ejectment; and it often happens, that after such a re-entry made, the lessee or his assignee, upon bill filed in a court of equity, not only holds out the landlord by an injunction, but likewise, pending the suit, doth run much more in arrear; and therefore provides, that as often as *one half year's rent shall be in arrear, and the landlord, &c. hath right by law to re-enter for non-payment, such landlord, &c. may, without any formal demand or re-entry, serve a [†declaration] in ejectment; [‡for in case the same cannot be legally served, or no tenant be in actual possession of the premises, affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery of any messuage, upon some notorious place of the lands, &c. comprised in such declaration;] which [§service, or affixing] shall stand instead of a demand or re-entry; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry, and ouster, it shall be made appear to the court by affidavit, or be proved upon the trial in case the defendant appears, that ||half a year's rent was due before the [†declaration] was served, and no sufficient distress was to be found, and that the lessor in ejectment had power to re-enter; the lessor in ejectment shall recover judgment

and

* "more than one half year's rent" by 11 Ann. c. 2. Ir.

† "Summons" in 11 Ann. c. 2. Ir.

‡ This clause not in 11 Ann. c. 2. Ir.

§ "Summons in ejectment," in 11 Ann. c. 2. Ir.

|| "More than one half year's rent" in 11 Ann. c. 2. Ir.

and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made. And in case the lessee, or other person claiming under the lease, shall suffer judgment to be recovered, and execution executed, without paying the rent and arrears, with full costs, and without filing any bill for relief in equity within 6 calendar months after execution executed; such lessee, and all persons claiming under the lease, shall be barred from all relief in law or equity, other than by writ of error; and the said landlord, &c. shall hold the said premises discharged from such lease; and if on such ejectment verdict shall pass for the defendant, or the plaintiff shall be nonsuited, except for the defendant's not confessing lease, entry, and ouster, such defendant shall have his full costs. Provided that nothing herein shall bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession; [*so as such mortgagee, within 6 calendar months after execution executed, pay all rent in arrear, and costs and damages, and perform all covenants and agreements, on the part of the first lessee.] And by s. 3. in case the lessee, or other person claiming any right or interest, in law or equity, in or to the lease, shall, within the time aforesaid, file a bill for relief in any court of equity, such person shall not have or continue any injunction, unless he shall, within 40 days after full answer, bring into court such sum as the lessor shall in his answer swear to be due over and above all just allowances, and also the costs taxed; to remain till the hearing of the cause, or to be paid out to the lessor on security, subject to the decree of the court. And in case such bill shall be filed within the time aforesaid after execution executed, the lessor of the plaintiff shall be accountable only for so much as he shall *bona fide*, and without wilful neglect, make of the demised premises, from the time of his entering into actual possession; and if what shall be so made by the lessor of the plaintiff happen to be less than the rent reserved, the lessee or assignee, before he shall be restored to his possession, shall pay such lessor what the money so made fell short thereof. And it is provided (s. 4) that if such lessee, his executors,

Saving for mortgages.

* This clause not in 11 Ann. c. 2. Ir.

s. 3.

Upon what terms relief is to be obtained in equity.

What accounts directed.

s. 4.

Effect of decree. tors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, they shall enjoy the demised lands according to the lease, without any new lease. And this act also provides (s. 4.) that if the tenant shall at any time before trial in such ejectment, pay or tender to the landlord, his executors or administrators, or his attorney in that cause, [*or pay into the court where the cause is depending,] all arrears with costs, all proceedings on the ejectment shall cease. By s. 7. this act shall not extend to Scotland.

s. 4.
If rent and costs paid or tendered before trial, proceedings stopped.

* This clause not in 11 Ann. c. 2. Ir.

s. 7.
Scotland excepted.

Law of ejectment in Ireland.

11 Ann. c. 2. s. 8. Ir.

Saving for infants, &c.

15 & 16 Geo. 3. c. 27. s. 4. Ir.

Ejectment how served when the tenant absconds.

s. 5.

Affidavit required.

This English statute (4 Geo. 2. c. 28.) appears to be taken from the 11 Ann. c. 2. Ir. which it has followed with such deviations as are noted in the margin. And the 11 Ann. c. 2. s. 8. Ir. contains also this peculiar provision, that no proceeding by virtue of this act for breach of any condition, shall prejudice the right of any infant, *feme covert*, person *non compos mentis*, or being out of the dominions of the crown. But the 11 Ann. c. 2. Ir. not having provided for the case where the ejectment could not be legally served; the 15 & 16 Geo. 3. c. 27. s. 4. Ir. has, in analogy to the clause contained in the 4 Geo. 2. c. 28. s. 2. Eng. *supra*, provided, that where the tenant of any demised premises shall abscond, and cannot be found, upon affixing a copy of the declaration, summons, and [†notice] in ejectment for non-payment of rent, upon some conspicuous part of the principal house upon the premises; and, if there be no house thereon, upon some other conspicuous place upon the premises; and in case of ejectments for non-payment of rent reserved upon leases of tithes, or other ecclesiastical dues, upon the church door of the parish, or union of parishes, and if there be no church, upon some other conspicuous part of such parish, &c.; the same shall be a sufficient service without any rule of court for that purpose. Provided, (s. 5.) that before such service of such summons and notice shall be allowed by the court as sufficient, it shall be made appear to such court, by affidavit, that the tenant hath absconded, and though diligent search hath been made he cannot be found; and provided also that such

† This refers to the notice required by the 8 Geo. 1. c. 2. s. 1. Ir. which will be presently stated.

summons or notice shall have been so affixed one month before any further proceeding in said ejectment. But the 11 Ann. c. 2. Ir. was previously amended by the 4 Geo. 1. c. 5. Ir. which enacts, (s. 2.) that it shall be lawful for any landlord or lessor from whom any distress shall be unlawfully rescued, to bring his ejectment, and recover the premises, as if no distress were to be found on the same; and if the tenant or lessee shall suffer judgment to pass against the casual ejector for want of appearing and taking defence, or of confessing lease, entry, and ouster; or on coming into court a verdict shall pass against him on proof of said rescue, then, if such tenant shall not pay all rent and arrear with full costs, within 6 calendar months after judgment had, such lessee, or his assignee, shall be barred from all relief in law or equity, other than a writ of error, and the said premises be discharged from such lease. And this statute (s. 3.) recites, that it hath been found difficult for landlords to prove the want of sufficient distress, by reason of niceties that attend such proof, whereby the 11 Ann. 2. c. 2. hath proved in a great measure ineffectual; and therefore enacts, that as often as [**more than one year's rent*] shall be due and in arrear to any landlord or lessor, though there be distress sufficient on the lands to answer the rent in arrear, such landlord, &c. may serve a summons in ejectment for the recovery of the demised premises; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry, and ouster, if it shall appear to the court, where the said suit is depending, by the affidavit of such landlord, &c. his agent or receiver; or that it shall appear on the trial in case the defendant appears, that more than one year's rent was due before the said summons was served, then such landlord, &c. or his lessee in ejectment, shall recover judgment, and have execution thereon; and the jury that shall try such cause, in case it shall be before a jury, and if not, the judge before whom such judgment shall be given, shall ascertain the sum that shall be so due; and in case the lessee, or his assigns, or other person claiming under said lease, shall suffer judgment to be recovered on such ejectment, and execution

4 Geo. 1. c. 5.
s. 2. Ir.

If distress rescued, ejectment as if no distress.

s. 3.

If more than a year's rent due, ejectment as if no distress.

**Vide 8 Geo. 1. c. 2. s. 1. Ir. post.*

Rent ascertained.

* *Vide* 15 & 16
Geo. 3. c. 27.
Ir. post.

s. 4.

Injunction bills.

*Costs to defend-
ant.*

s. 5.
*Saving for mort-
gagees.*

s. 6.
*Saving for in-
fants, &c.*

8 Geo. 1. c. 2.
s. 1. *Ir.*

*Ejectment if a
year's rent due.*
† *Vide* Ch. 19.
post.

*Notice, affida-
vit, and evidence
required.*

† *Vide* 5 Geo. 2.
c. 4. s. 3. *Ir. post.*

execution to be executed thereon, without paying [*on demand] the rent so ascertained to be in arrear, together with full costs, (which the officer is hereby empowered to tax) or depositing the same in a court of equity on filing a bill within 6 months after execution executed; then the lessee, and all other persons claiming under said lease, shall be barred from all relief or remedy in law or equity other than by writ of error; and such landlord shall from thenceforth hold the said premises discharged from such lease. Provided (s. 4.) that where any bill shall be filed in equity, on the plaintiff's depositing the rent so proved in arrear, with the costs, the proceedings shall be in the same manner as by the 11 Ann. c. 2. is directed. And if on such ejectment verdict shall pass for the defendant, or the plaintiff shall be nonsuited, (except for the defendant's not confessing lease, entry, and ouster) then such defendant shall have his full costs. [*This act also provides (s. 5.) that nothing herein shall bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession.] And by s. 6. this act shall not defeat the title of any infant, *feme covert*, or person of *non sane* memory. This act is amended by the 8 Geo. 1. c. 2. *Ir.* which recites, that several artifices had been made use of to evade said act, particularly by taking defence to such ejectments in the name of some persons not deriving under such lease, [†and by insisting on privilege of parliament,] and therefore enacts, that as often as *one whole year's rent, or more*, shall be due and in arrear to any landlord or lessor, such landlord, &c. may bring an ejectment for the recovery of the demised premises, and, upon service of the summons in the said ejectment, notice in writing shall be given to the person on whom such summons shall be served, that such ejectment is brought on account of the non-payment of rent; and if any person shall, after affidavit made of such service, take defence in such ejectment, and shall appear on the trial, and confess lease, entry, and ouster, and the plaintiff shall then make due proof of the perfection of [†the counterpart of the lease] by which such rent is reserved, and that such landlord, &c. or those under whom he derives

* *Vide* p. 137. *ante* and p. 141 *post.*

title,

title, have been in possession of such lands, &c. for 3 years before service of such ejectment, or shall shew any sufficient title to the premises, and it shall appear in evidence at the trial that one year's rent, or more, is due to the said landlord, &c. then the plaintiff shall recover and have judgment, in such manner as by the former acts is directed. And by s. 7. in all ejectments for non-payment of rent, notice shall be given in writing, on the service of such ejectment, that such ejectment is brought on account of non-payment of rent. And this statute (s. 4.) provides in analogy to the 4 Geo. 2. c. 28. Eng. (*ante* page 137,) that where any lease for the avoiding of which such ejectment is brought, shall, before the bringing such ejectment, be mortgaged for a valuable consideration, and the lessee, and mortgagee, and their respective assignees, shall be served with summons in said ejectment, and proper affidavit of the summons made and filed, and the plaintiff shall obtain judgment and execution in said ejectment, then, if said mortgagee, or his assignee, shall not, within 9 months after such execution executed, pay or tender unto such landlord, &c. the said rent in arrear, and costs, (to be ascertained in such manner as by the former acts is directed) such mortgagee, &c. shall be barred and foreclosed of all relief or remedy, in law or equity, on account of said mortgage, and the said landlord, &c. shall hold the premises discharged from said mortgage, and the equity of redemption. But by s. 5. all such mortgages and assignments shall be **duly* registered, within 6 calendar months after the perfection thereof; and in default of such registry the landlord may proceed in ejectment, and obtain judgment and execution thereon, although such mortgagee be not served with summons in ejectment.

s. 7.

Notice to be given.

s. 4.

Mortgagee barred, if rent and costs not paid in 9 months.

s. 5.

*Mortgages to be registered.*** Vide b. 2. Ch. 13.**Ejectment though no clause of re-entry.**5 Geo. 2. c. 4. s. 1. Ir.**† Vide 25 Geo. 2. c. 13. next page.*

And these statutes are further amended by the 5 Geo. 2. c. 4. Ir. which recites (s. 1.) that several lands, &c. have been demised and set for lives, or years determinable upon lives, by leases, minutes, or contracts in writing, [*†*containing an actual demise,] wherein no clause of re-entry hath been inserted; and that a doubt hath been conceived whether, for want of such clause, by the said several statutes, the landlord or lessor, can bring

s. 3.
Evidence to
supply the proof
of counterpart.

25 Geo. 2. c. 13.
s. 2. Ir.

Ejectment upon
article, &c.
ascertaining
rent, though no
words of demise,
or clause of re-
entry therein.

s. 3.

Want of coun-
ter-part of ar-
ticle, &c. how
supplied.

bring an ejectment, although more than a year's rent is in arrear; and therefore declares and enacts, that where one whole year's rent, or more, is due and in arrear to any landlord or lessor for any lands, &c. so held by lease, minute, or contract in writing, such landlord, &c. or those claiming under him, may bring an ejectment, and recover the possession of such lands, &c. so demised, in such manner as if a clause of re-entry had been contained in such lease, &c. And by s. 3. where one year's rent, or more, is due before the summons in ejectment, where it shall be necessary to produce the [†counterpart] of any lease, minute, or contract, containing an actual demise, if it shall appear to the court that no counterpart was perfected, or that the counterpart is lost, or so mislaid that it cannot be produced upon such trial, then if the lessor in such ejectment shall give in evidence the original lease, &c. or a copy thereof, or a copy of such counterpart, and that the lessee therein named enjoyed the lands, &c. for which such ejectment shall be brought, under such lease, &c. such original lease, or copy thereof, or copy of the counterpart, shall be of the same effect as if the counterpart of such lease, &c. had been proved upon such trial. And the 25 Geo. 2. c. 13. s. 2. Ir. further provides, that where any article, minute, or contract in writing, shall be made of any lands, &c. and the rent payable for the same ascertained by such article, &c. and the person to whom such article, &c. is made, or any deriving under him, shall enjoy said lands, &c. under said article, &c. and one whole year's rent, or more, shall be unpaid or in arrear to any landlord for said lands, &c. such landlord, or those lawfully claiming under him, may bring an ejectment, and recover the possession of such lands, &c. as if such article, &c. contained an actual demise, and as if a clause of re-entry had been specified therein. And by s. 3. on any trial in ejectment for non-payment of rent in pursuance of this act, where one whole year's rent is unpaid, or in arrear, before the service of the summons in such ejectment, where it shall be necessary to produce the counterpart of any

† Vide 8 Geo. 1. c. 2. s. 1. Ir. ante; and 25 Geo. 2. c. 13. Ir. post.

any such article, &c. if it shall appear to the court that no counter-part was perfected, or, if perfected, that such counter-part was lost, or so mislaid that it cannot be produced upon such trial, then if the lessor in such ejectment shall give in evidence the original article, &c. or a copy thereof, or a copy of such counterpart, and the enjoyment of the said lands, &c. such original article, &c. or a copy thereof, or a copy of such counterpart, shall be of the same effect as if the counterpart had been produced and proved. And because a doubt was entertained whether under the construction of the 4 Geo. 1. c. 5. Ir. (*ante* page 139-140.) the rent ascertained as by said act directed, ought not to be demanded from the lessee or other person deriving under the lease; the 15 & 16 Geo. 3. c. 27. s. 1. Ir. enacts, that no eviction of any lessee, or other person deriving under any lease, by virtue of an ejectment for non-payment of rent grounded on said acts, shall be affected or impeached on account of the not making such demand of said rent after the ascertaining thereof as aforesaid, nor shall it be necessary to make such demand. And this statute further recites (s. 3.) that a doubt hath been conceived, whether under the aforesaid laws an ejectment for non-payment of rent reserved upon leases of great or small tithes, or other ecclesiastical dues, may be brought for the eviction of such leases in case of non-payment of such rent; and therefore enacts, that as often as one whole year's rent shall be due or in arrear to any lessor of any lease of great or small tithes, &c. and such lessor hath right by law to re-enter or re-possess the premises for the non-payment of such rent, such lessor may bring ejectment for recovery of such tithes, &c. and proceed thereon in the same manner, &c. as in case of an ejectment for non-payment of rent reserved upon a lease of lands.

The 5 Geo. 2. c. 4. s. 2. Ir. enacts, that every lessor recovering in such ejectments for non-payment of rent, and obtaining judgment and execution thereupon, shall have the same remedy for all arrears to the time of such execution executed, as such lessor might have had against the lessee, or his assignee, if no such ejectment had been

15 & 16 Geo. 3.
c. 27. s. 1. Ir.

*Demand of rent
ascertained, not
necessary.*

s. 3.

*Such ejectments
may be for
tithes, &c.*

*Ordinary reme-
dies for arrears
of rent, notwith-
standing judg-
ment, &c. in
ejectment.*

5 Geo. 2. c. 4.
s. 2. Ir.

been brought. This clause as peculiar to this Irish act. And the law of ejectment in Ireland is regulated by the 11 Ann c. 2. 4 Geo. 1. c. 5. 8 Geo. 1. c. 2. 5 Geo. 2. c. 4. 25 Geo. 2. c. 13. and 15 & 16 Geo. 3. c. 27. is in several points different from the law as established in England by the 4 Geo. 2. c. 28. and 11 Geo. 2. c. 19. as will appear from their juxta-position in this chapter.

CHAP. XII.

Of Trespass.

Actions against officers to be laid in the county where the fact was committed.

7 Jac. 1. c. 5. Eng.

21 Jac. 1. c. 12. Eng.

• “Sheriff” here added in 10 Car. 1. st. 2. c. 16. Ir.

† “Or other persons executing their offices,” in the 10 Car. 1. st. 2. c. 16. Ir.

Defendant to have double costs.

10 Car. 1. st. 2. c. 16. Ir.

BY the 7 Jac. 1. c. 5. Eng. as amended by the 21 Jac. 1. c. 12. Eng. if any action, bill, plaint, or suit upon the case, trespass, battery, or false imprisonment, shall be brought against *any justice of peace, mayor or bailiff of any city or town corporate, head-borough, portreve, constable, tithing-man, collector of subsidy or fifteens, church-wardens, [†and persons called sworn-men, exercising the office of church-wardens,] or overseer of the poor, and their deputies, or any other which in their assistance, or by their command, shall do any thing touching their offices, for any thing by them done by virtue of their offices, the action, &c. shall be laid within the county where the fact shall be done; and it shall be lawful for every person aforesaid to plead the general issue, not guilty, &c.; and if the verdict shall pass with the defendant, or the plaintiff become nonsuit, or suffer any discontinuance, the defendant shall have double costs. And if upon the trial the plaintiff shall not prove that the trespass, &c. was committed within the county wherein such action shall be laid, the jury shall find the defendant not guilty, without regard to the evidence. The 10 Car. 1. st. 2. c. 16. Ir. has followed these statutes with such deviations only as are noted in the margin. The

42 Geo.

42 Geo. 3. c. 85. s. 6. G. B. recites, that it is expedient to extend the provisions of the 21 Jac. 1. c. 12. to persons who may by law commit to safe custody, either in or out of the kingdom; and therefore enacts, that the provisions therein contained shall extend to all persons holding or exercising any public employment, or any office either civil or military, in or out of this kingdom; and who by any law, or lawful authority, within this kingdom or any foreign possession of his majesty, may have power to commit persons to safe custody: Provided, that where any action, &c. upon the case, trespass, battery, or false imprisonment, shall be brought against any such person in this kingdom, for any thing done out of this kingdom, it shall be lawful for the plaintiff to lay such thing to be done in Westminster, or in any county where the person, against whom such action, &c. shall be brought, shall reside. This act extends only to Great Britain. To render justices of the peace in Great Britain and Ireland more safe in the execution of their duty, the 43 Geo. 3. c. 141. U. K. provides, that in all actions which shall be brought against any justice of the peace in the united kingdom, on account of any conviction by him made by virtue of any act of parliament in force in the united kingdom; or for any thing done, or commanded to be done, for the levying of any penalty, apprehending any party, or for carrying any such conviction into effect; in case such conviction shall have been quashed, the plaintiffs, besides the amount of the penalties levied, (in case any levy thereof shall have been made) shall not recover greater damages than 2*d*. nor any costs of suit whatsoever, unless it be expressly alleged in the declaration, in the action wherein the recovery shall be had (and which shall be in an action upon the case only) that such acts were done maliciously, and without reasonable and probable cause. And by s. 2. such plaintiff shall not be entitled to recover against such justice any penalty which shall have been levied, nor any damages or costs, in case such justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which

42 Geo. 3. c. 85. s. 6. G. B.

All persons having public employments, who can commit to safe custody, comprehended within 21 Jac. 1. c. 12. supra.

Action brought for any thing done out of the kingdom where laid.

43 Geo. 3. c. 141. U. K.

*In actions against justices for levying any penalty, &c. 2*d*. damages only recovered, (besides penalty) unless alleged in declaration that thing was maliciously done.*

s. 2.

Plaintiff not entitled to recover if proved that the offence was committed.

he had been apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence. By the 24 Geo. 2. c. 44. s. 1. Eng. no writ shall be sued out against, nor any copy of any process at the suit of any subject, served on, any justice of peace, *for any thing by him done in the execution of his office, until notice in writing of such intended writ or process be delivered to him, or left at the usual place of his abode, by the attorney or agent of the party who intends to sue, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action; [†on the back of which notice shall be indorsed] the name of such attorney, with the place of his abode, who shall be entitled to the fee of 20s. for preparing and serving such notice. And by s. 3. no such plaintiff shall recover any verdict against such justice, where the action is grounded on any act of the defendant as justice of the peace, unless it is proved upon the trial that such notice was given; but in default thereof such justice shall recover a verdict and costs. And by s. 5. no evidence shall be given by the plaintiff, on the trial of any such action, of any cause of action except such as is contained in such notice. By s. 2. it shall be lawful for such justice of the peace, at any time within one calendar month after such notice given, to tender amends to the party complaining, or to his attorney; and in case the same is not accepted, to plead such tender in bar to any action grounded on such writ or process, together with the plea of "Not Guilty" and any other plea with leave of the court; and if upon issue joined the jury find the amends so tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or in case the plaintiff become nonsuit, or discontinue, or judgment be given for such defendant upon demurrer, such justice shall be entitled to the like costs as if he had pleaded the general issue only; and if the jury find that no amends were tendered, or that the

24 Geo. 2. c. 44.
s. 1. Eng.

No writ to be
sued against any
justice, &c. till
notice given him.

† These words
not in the

23 Geo. 3. c. 70.

Eng. or
46 Geo. 3. c. 106.

1. post.

s. 3.

Plaintiff not to
recover without
proof of notice.

s. 5.

Evidence not to
be given of any
cause not con-
tained in notice.

s. 2.

Amends may be
tendered, and
pleaded in bar:

* "Or governor or deputy governor of any county or place in Ireland," follows "justices of the peace" throughout the 43 Geo. 3. c. 143. 1.

same

same were not sufficient, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages as they think proper, which he shall recover together with his costs. And by s. 4. in case such justice shall neglect to tender any amends, or shall have tendered insufficient amends before the action brought, it shall be lawful for him by leave of the court where such action depends, at any time before issue joined, to pay into court such sum as he sees fit; whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court. By s. 6. no action shall be brought against any constable, or other officer, or against any person acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made, or left at the usual place of his abode, (by the party intending to bring such action, or by his attorney in writing, signed by the party demanding the same,) of the perusal and copy of such warrant, and the same hath been refused or neglected for 6 days after such demand: and in case after such demand, and compliance therewith, any action be brought against such constable, &c. for any such cause as aforesaid, without making the justice who signed or sealed the said warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in such justice; and if such action be brought jointly against such justice, and such constable, &c. then, on proof of such warrant, the jury shall find for such constable, &c. notwithstanding such defect of jurisdiction; and if the verdict be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as such plaintiff is liable to pay to such defendant, for whom such verdict is found as aforesaid. Provided (s. 7.) that where the plaintiff in any such action against any justice of the peace, shall obtain a verdict, in case the judge before whom the cause is tried, in open court certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously com-

s. 4.

Or money paid into court.

s. 6.

Action not to be brought against constables till demand and refusal of copy of warrant.

s. 7.

Double costs on judge's certificate.

s. 8.

*Limitation for such actions.*43Geo.3.c.143.
L.*Collectors of public monies, &c. may plead the general issue.*13 & 14 Car. 2.
c. 17. Eng.23Geo. 3 c.70.
s. 30-1-2-3.
Eng.*Officers of excise protected from vexatious actions in like manner as justices, &c.*

s. 34.

*Limitation for action against officers of excise.** "3 calendar months" in
46Geo.3.c.106.
L.

mitted, the plaintiff shall be entitled to double costs. And by s. 8. no action shall be brought against any justice of peace for any thing done in the execution of his office, nor against any constable, &c. acting as aforesaid, unless commenced within 6 calendar months after the fact committed. The 43 Geo. 3. c. 143. L. contains the same provisions with respect to Ireland, with this distinction only, that this imperial statute extends to governors and deputy governors of counties and places in Ireland, as well as to justices of the peace.

The 13 & 14 Car. 2. c. 17. Eng. is an act for the relief of collectors of public monies, and their assistants and deputies, and provides, that all collectors, and other persons, who shall levy or collect any money by virtue of any act of parliament now in force, and who shall be sued for the same by any other than the king, may plead the general issue, &c. And the 23 Geo. 3. c. 70. Eng. contains clauses, (s. 30-31-32 & 33) "for the more effectual preventing vexatious suits against the officers of excise, and their assistants, acting under the authorities and powers to them given by the several statutes made for securing the duties of excise and inland duties," which are corresponding to those of the 24 Geo. 2. c. 44. s. 1-2-3-4-5, (p. 146-7.) And by s. 34, provides, that if any action or suit shall be brought against any person for any thing done by any officer of excise, or others acting in his aid, in execution of, or by reason of, his office, such action, or suit, shall be commenced within* 3 months next after the cause of action shall arise; and shall be laid and tried in the county or place where the facts were committed; and the defendant shall and may plead the general issue, &c.;† and if the plaintiff be nonsuited, or discontinue his action, &c. or if upon verdict or demurrer judgment shall be given against the plaintiff, the defend-

† The 46 Geo. 3. c. 106. s. 73. L. here adds, "or in case the action shall be an action of replevin, may avow generally that he or they took the goods in the declaration mentioned, as an officer appointed by, or acting under, the commissioners of customs and port duties, or the commissioners of inland excise and taxes, as the case may be."

ant shall recover treble costs.* And these several provisions of the 23 Geo. 3. c. 70. Eng. are extended to the officers of the customs, or persons acting by their order, and in their aid, by the 24 Geo. 3. st. 2. c. 47. s. 35. Eng. The 46 Geo. 3. c. 106. I. contains similar provisions (s. 69. to 74.) in respect to actions against any officers of customs or excise, or officers appointed or acting under the commissioners of customs and port duties, or the commissioners of inland excise and taxes, or against any person acting by order or in aid of such officers, for any thing done in the execution of, or by reason of, any act of parliament in force in Ireland relating to the revenues, &c. under the management of the said commissioners. And the 23 Geo. 3. c. 70. Eng. further provides, (s. 29.) that in case any information or suit shall be brought to trial, on account of [the seizure of any goods seized as forfeited by any act relating to the revenue of excise or inland duties, or of any ship, &c. or horses, &c. or carriages used or employed in carrying the same,] wherein a verdict shall be found for the claimer thereof; and it shall appear to the judge or court before whom the same shall be tried, that there was a probable cause of seizure, such judge, &c. shall certify on the record that there was a probable cause for the prosecutor seizing said goods, &c.; and in such case the claimant shall not be entitled to any costs of suit, nor shall the person who seized the said goods, &c. be liable to any action, indictment, or other suit or prosecution on account of such seizure; and in case any action, indictment, or prosecution, shall be brought to trial against any person on account of the seizure of any such goods, &c. wherein a verdict shall be given against the defendant, if the court or judge before whom such action, &c. shall be tried, shall certify on the record, that there was a probable

24 Geo. 3. st. 2. c. 47. s. 35. Eng. Officers of the customs in like manner protected.

46 Geo. 3. c. 106. I. Corresponding provisions as to revenue officers of Ireland.

23 Geo. 3. c. 70. s. 29. Eng. If probable cause of seizure, the claimant shall not have costs, nor above 2d damages besides thing seized.

† "any seizure made by virtue of any act relating to the revenue, &c. under the management of the commissioners, &c." in 46 Geo. 3. c. 106. I.

cause

* The 46 Geo. 3. c. 106. s. 73. I. provides, that such officer, or his attorney, shall, at least 14 days before such trial, give notice in writing to the plaintiff, or his attorney, what record (if any) he intends to give in evidence. And by s. 74. the plaintiff in every such action shall give at least 20 days notice of trial; and the like notice shall be given by the defendant if the trial be by *proviso*.

cause for such seizure, then the plaintiff, besides the thing so seized, or the value thereof, shall not be entitled to above 2*d.* damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined above 1*s.*

46 Geo. 3. c. 106. And the 46 Geo. 3. c. 106. I. has also adopted this provision of the 23 Geo. 3. c. 70. Eng.

In trespass quare clausum fregit, plea of disclaimer, and that trespass was involuntary, and tender of amends, a bar.

21 Jac. 1. c. 16. s. 5. Eng.

10 Car. 1. st. 2. c. 6. s. 16. Ir.

10 Car. 1. st. 2. c. 6. s. 16. Ir.

Mode of settling disputes arising from trespass of cattle.

37 Geo. 3. c. 36. Ir.

40 Geo. 3. c. 71. s. 1. Ir.

By the 21 Jac. 1. c. 16. s. 5. Eng. in all actions of trespass *quare clausum fregit*, wherein the defendant shall disclaim in his plea to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender of sufficient amends before the action brought, whereupon the plaintiff shall join issue; and if the issue shall be found for the defendant, or the plaintiff be non-suited, the plaintiff shall be barred from the said action, or other suit concerning the same. The 10 Car. 1. st. 2. c. 6. Ir. contains a similar provision.

The statutes respecting costs in trespass, and other personal actions, are reserved for a subsequent chapter; and many other statutes relative to trespass, or on which this action may be founded, have been already given, or are postponed, as more immediately referable to other heads. But I have reserved for this place the clauses of the 37 Geo. 3. c. 36. Ir. as amended by the 40 Geo. 3. c. 71. Ir. which provide, that whenever any cattle or beasts are distrained for trespass, or damage *feasant*, it shall be lawful for any justice of the peace residing in the parish where such distress shall be taken, or in any parish adjoining thereto, upon complaint made thereof, to take security for the trespass demanded, and immediately to issue an order under his hand and seal to the pound-keeper, or other person in whose custody such cattle, &c. may be, to deliver the same to the owner, upon being paid the sum demanded, together with such fee as such pound-keeper is by law or custom entitled to demand, and to summon within 24 hours the parties concerned before him, and to require each party to name one land-holder residing

residing in such parish, or some adjoining parish, as arbitrators to appraise and value the damage done; and in case the arbitrators shall not agree, such justice may name any third person as umpire; which arbitrators or umpire shall value the damage done, and make a true award according to the best of their skill and judgment upon oath, (which oath such justice is to administer) and shall certify the same under his or their hands to such justice, who, upon receipt of such certificate, shall issue an order to the pound-keeper, &c. to pay over to the person sustaining the damage the sum so awarded, and return to the owner of the cattle the overplus: Provided, that if the parties shall agree to appoint one land-holder as arbitrator, it shall be lawful for such justice, upon receiving his award certified under his hand, to proceed in like manner as if it was the award of 2 arbitrators. And by s. 2. if any person at whose suit such distress shall be taken, shall not obey such summons, or appoint such arbitrators, such justice may hear the cause in a summary manner, and may order such cattle, &c. to be delivered to the owner, paying the pound-keeper the accustomed fees. By s. 3. if any pound-keeper, &c. shall refuse or neglect to deliver up such cattle, &c. upon being served with such order, and being tendered the sum therein specified, together with the usual fees, or shall deliver such cattle to the owner without such justice's order, or paying the sum demanded for trespass, he shall forfeit £5. above the sum demanded for trespass, to be levied by distress and sale of his goods, by warrant of any justice of the county, for the use of the county infirmary. Provided (s. 5.) that nothing herein shall authorize any justice of peace to issue any order as aforesaid, if it shall appear that such cattle, &c. were distrained for the purpose of ascertaining the title to any land, or for rent. By s. 4. if any swine, not having an iron ring or staple in the nose, shall be impounded for trespass or damage *feasant*, the person owning such swine shall be liable to pay treble the value of the damage done by such swine, which the aforesaid arbitrators or umpire shall award. And by s. 6. it shall be lawful for the justices at the general quarter

Arbitrators how appointed.

s. 2.

If parties do not attend justices may proceed.

s. 3.

Penalty for default of pound-keeper.

s. 5.

Not to extend to distress for ascertaining title, or for rent.

s. 4.

Treble value of damages done by swine without rings, &c.

s. 6.

ter

*Justices to fix
rates of trespass.*

s. 7.

*Treble rates to be
paid by persons
keeping cattle to
graze on sides of
roads.*

ter sessions held for the several districts in each county, from time to time, to fix and alter the several rates of trespass for each horse, mare, or gelding, mule or ass, black beast, bull, ram, sheep, goat, or pig, respect being had to the season of the year, and state of the land trespassed upon; provided, that nothing herein shall prevent any person from recovering greater damage if awarded by arbitrators. And to prevent the frauds practised by persons, who do not occupy any land, keeping cattle and grazing them on the sides of the road; it is provided (s. 7.) that it shall be lawful for any person distraining such cattle for trespass, or damage *jeasant*, to charge treble the affixed rate of trespass; and it shall be lawful for any justice of peace to whom complaint is made, upon proof of the damage by arbitrators as aforesaid, to order treble damage to be paid by the owners of such cattle. The other clauses of this statute have been already stated (Book 2. Chap. 8.) to which it is proper here to refer.

CHAP. XIII.

Of Nuisance,

*Writ of nuisance
against him that
did the nuisance,
or against his
alienee.*

13 Edw. 1. st. 1.
c. 24. E. & I.

6 Ric. 2. st. 1.
c. 3. E. & I.

THE 13 Edw. 1. st. 1. c. 24. E. & I. recites, that where land was transferred from one to another, no special writ (of assize of nuisance) was to be found in the register of chancery; and therefore provides, that against him that levied or did the nuisance, the writ shall be made as hath been used before: *Questus est nobis A quod B injuste, &c. levavit domum, murum, mercatum, et alia quæ sunt ad nocumentum, &c.* And if such things levied be aliened from one to another, the writ shall be thus: *Questus est nobis A quod B et C levaverunt, &c.* And it is a provision of another ancient statute, 6 Ric. 2. st. 1. c. 3. E. & I. that all writs of nuisances, commonly called *vicontiels*, shall

shall be made at the election of the plaintiff in the nature of old times used, or else in the nature of assizes, determinable before the king's justices of the one bench or the other, or before the justices of assize, to be taken in the county.

In what courts writs of nuisance called vicontiels shall be sued.

CHAP. XIV.

Of Waste.

BY the 52 Hen. 3. c. 24. E. & I. fermors during their terms shall not make waste, sale, or exile of houses, woods, nor of any thing belonging to their tenements, without license had by writing of covenant; which if they do, and thereof be convict, they shall yield damages, and shall be punished by amercement grievously. And by the 6 Edw. 1. c. 5. E. & I. a man shall have a writ of waste in chancery against him that holdeth by the law of England, or otherwise for term of life, or for term of years, or a woman that holdeth by dower; and he that is attainted of waste shall lose the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. And by the 6 Edw. 1. c. 13. E. & I. after a plea shall be moved in the city of London by writ, the tenant shall have no power to make any waste or estrepement of the land in demand, pending the plea; and if he do, the mayor and bailiffs shall cause it to be stopped at the suit of the demandant. And the same ordinance shall be observed every where throughout the realm. By the 13 Edw. 1. st. 1. c. 14. E. & I. of waste done to the damage of any person there shall be no writ of prohibition, but of summons, so that he of whom complaint is shall answer for waste done at any time; and if he come not after the summons, he shall be attached, and after the attachment he shall be distrained, and if he come

Penalty for fermors committing waste.

52 Hen. 3. c. 24. E. & I.

6 Edw. 1. c. 5. E. & I.

Tenants against whom action of waste is maintainable.

6 Edw. 1. c. 13. E. & I.

No waste shall be made pending suit for the land.

13 Edw. 1. st. 1. c. 14. E. & I.

Process in an action of waste.

come not after the distress the sheriff shall be commanded, that in proper person he take with him 12, &c. and go to the place wasted, and inquire of the waste done, and return the inquisition, and after the inquisition returned, they shall pass unto judgment, as in the 6 Edw. 1. c. 5.

13 Edw. 1. st. 1. c. 22. E. & I.

Waste maintainable by one tenant in common against another.

E. & I. *supra*. And by the 13 Edw. 1. st. 1. c. 22. E. & I. where two or more hold wood, turf-land, or fishing, in common, and some of them do waste, an action may be by writ of waste; and when it is passed unto judgment, the defendant shall choose either to take his part in a place certain by the assignment of the sheriff, and by the view and oath of his neighbours, or else he shall submit to take nothing in the same wood, turf-land, &c. but as his partners will; and if he choose to take his part in a place certain, the place wasted shall be assigned for his part.

20 Edw. 1. st. 2. E. & I.

The heir shall have an action for waste done in the time of his ancestor.

By the 20 Edw. 1. st. 2. E. & I. every heir, as well within age, as of full age, shall have his recovery by writ of waste, and it shall hold place for waste and destruction made in lands of his own inheritance, as well in the times of his ancestors as at any other time. And by the

11 Hen. 6. c. 5. E. & I.

Waste maintainable against a tenant who grants his estate, and takes the profits.

11 Hen. 6. c. 5. E. & I. where people let their lands, some for term of life, and some for term of years, and the tenants have granted their estate, and afterwards the first tenants continually occupy the lands, and in the said lands do waste and destruction; they in reversion may have a writ of waste against the tenants for life, or years, where such first tenants before the grant of their estates were punishable of waste, and where, after the grant, the first tenants take the profits at the time of the waste done.

CHAP. XV.

Of Subtraction.

THE defects of the common law, in not providing remedies for the subtraction of rents in certain cases, have been supplied by the 32 Hen. 8. c. 37. Eng. which enacts, (s. 1.) that the executors and administrators of tenants in fee-simple, tenants in fee-tail, and tenants for term of life, of rent-services, rent-charges, rents-seck, and fee-farms, unto whom any such rent or fee-farm shall be due, shall have an action of debt for such arrearages, against the tenants that ought to have paid in the life of their testator, or against the executors and administrators of the said tenants; and it shall be lawful to every such executor, &c. of any person unto whom any such rent, &c. is due, to distrain, and make avowry for the arrearages upon the lands, &c. charged with the payment, so long as the said lands continue in the seisin or possession of the tenant in demesne, who ought to have paid the rent, &c. or of any other person claiming only from the same tenant by purchase, gift, or descent, in like manner as their testator might have done. [*Provided (s. 2.) that this act shall not extend to any manor or lordship in Wales, whereof the inhabitants have used time out of mind to pay unto every lord of such lordship, &c. at his first entry, any sums of money for the discharge of all duties and penalties, wherewith the said inhabitants were chargeable to the lords' ancestors or predecessors.] And by s. 3. if any man shall have, in right of his wife, any estate in fee-simple, fee-tail, or for term of life, in any rents or fee-farms, and the same shall be unpaid in the wife's life; the husband, after the death of his wife, his executors and administrators, shall have an action of debt for the arrearages against

Remedies given to executors to recover arrears of freehold rents.
32 Hen. 8. c. 37. s. 1. Eng.

s. 2.

Exception as to Wales.

* This clause not in 10 Car. 1. st. 2. c. 5. Ir.

s. 3.

Husband also may bring debt or distrain for arrears due to wife.

s. 4.

*Tenant pur
auter vie, or his
executors, &c.
may bring debt
or distrain after
the death of ces-
tui que vie for
rent due in his
life time.*

10 Car. 1. st. 2.
c. 5. Ir.

8 Ann. c. 14.
s. 4 & 6. Eng.

*Debt may be
brought for free-
hold rents.*

*Vide 5 Geo. 3.
c. 17. s. 3. Eng.
vol. 1. p. 522.

s. 6.

*Arrears of rent
may be dis-
trained for after
expiration of
leases.*

s. 7.

Proviso.

+ "Or those
claiming under
him." added in
9 Ann. c. 8. Ir.
11 Geo. 2. c. 15.
s. 3. Ir.

against the tenant of the demesne that ought to have paid the same, his executors or administrators; and also the husband after the death of his wife may distrain, and make avowry for the arrearages, in like manner as if his wife had been living. And by s. 4. if any person shall have any rents or fee-farms for term of life of any other person, and the said rent, &c. shall be unpaid in the life of such person, and after such person doth die; he unto whom the rent, &c. was due, his executors and administrators, shall have an action of debt against the tenant in demesne that ought to have paid the same, his executors and administrators, and also distrain and make avowry, for the same arrearages upon such lands, &c. out of which the said rents, &c. were issuing, in like manner as if such person by whose death the estate in the said rents, &c. was determined, had been in full life. The 10 Car. 1. st. 2. c. 5. Ir. is the corresponding statute in Ireland. The 8 Ann. c. 14 s. 4. Eng. recites, that no action of debt lay against a tenant for life or lives, for any arrears of rent during the continuance of such estate; and therefore enacts, that it shall be lawful for any person having any rent in arrear or due upon any lease or demise for life or lives, to bring an action of debt for such arrears, as if such rent were due and reserved upon a lease for years.* And whereas, after the determination of any leases, no distress could by law be made for any arrears of rent that grew due on such leases before the determination thereof; This statute (s. 6.) therefore enacts, that it shall be lawful for any person having any rent in arrear or due upon any lease for life or lives, or for years or at will, ended or determined, to distrain for such arrears after the determination of such leases, as if such leases had not been ended, &c. Provided (s. 7.) that such distress be made within 6 calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant† from whom such arrears became due. The 9 Ann. c. 8. s. 5 & 7. Ir. contains similar provisions. The 11 Geo. 2. c. 15. s. 3. Ir. provides, that every archbishop or bishop translated from one see or diocess to another, unto whom any chief rent or other rent shall be

be

be due, and not paid at the time of his translation, and in case of his decease his executors or administrators, may have an action of debt for all such arrears of rent, against the tenants who ought to have paid the same, to the time of such translation, or against the executors, &c. of such tenants; and it shall be lawful for such archbishop, &c. so translated, his executors, &c. to distrain for such arrears upon the lands, &c. charged with the payment of such rents, and liable to the distress of such archbishop, &c. at the time of such translation, so long as the said lands, &c. continue in the seisin or possession of any other person claiming said lands, &c. by purchase, gift, descent, or assignment; and such archbishop, &c. his executors, &c. may avow upon such distress for the matter aforesaid. Provided (s. 4.) that such action of debt shall be commenced, or such distress be taken, within two years after such translation. To obviate some difficulties occurring in the recovery of rents where the demises are not by deed; the 11 Geo. 2. c. 19. s. 14. Eng. provides, that in such cases the landlord may recover a reasonable satisfaction for the lands, &c. occupied by the defendant, in an action on the case for the use and occupation of what was so held; and if in evidence on the trial, any parol demise, or any agreement not by deed, whereon a certain rent was reserved, shall appear, the plaintiff may make use thereof as an evidence of the *quantum* of the advantages. Which clause is also contained in the 23 & 24 Geo. 3. c. 46. Ir.

By the 6 Edw. 1. c. 4. E. & I. if a man lease his land to fee-farm, or to find estovers in victuals or clothes, which amounts to the fourth part of the value of the land; and he who holdeth the land lets it lie fresh (so that one cannot find distress) for two or three years, without rendering the farm-rent, or doing that which is contained in the writing of the lease; after two years passed the lessor shall have an action to demand the land in demesne; and if he against whom the land is demanded comes before judgment, and renders the arrears and damages, and finds security (such as the court shall think sufficient) to render afterwards that which is contained in the writing, he shall hold the land; but if he stays until it be recovered by judgment

Bishop, his executors, &c. may bring debt, or distrain, for arrears of rent due at time of his translation.

s. 4.

Proceedings to be taken within 2 years.

11 Geo 2. c. 19. s. 14. Eng.

Rents how recovered where the demise is not by deed.

23 & 24 Geo. 3. c. 46. s. 3. Ir.

In what case a cessavit is maintainable against tenant in fee-farm.

6 Edw. 1. c. 4. E. & I.

judgment, he shall be barred. And in like manner by the 13 Edw. 1. st. 1. c. 21 E & I. if any withhold from his lord his due and accustomed service by 2 years, the lord shall have an action to demand the land in demesne by such writ, viz: *Præcipe A quod juste, &c. reddat B tale tenementum quod A de eo tenuit per tale servitium, et quod ad prædictum B reverti debet, eo quod prædictus A in faciendo servitium prædictum per biennium cessavit, ut dicitur.* And not only in this case, but also in the case of the statute of Gloucester, *supra*, writs of entry shall be made upon the heir being tenant, and upon those to whom such tenements shall be aliened. The provisions of the several statutes with respect to the proceedings by distress and ejectment for the recovery of rent, have been already stated: but the following clauses of the 14 Geo. 2. c. 19. Eng. were reserved for this place. By this statute (s. 16.) if any tenant holding lands, &c. at a rack rent, or where the rent reserved shall be full three fourths of the yearly value of the premises, who shall be in arrear for one years rent, shall desert the premises, and leave the same uncultivated, or unoccupied, so as no sufficient distress can be had to countervail the arrears; it shall be lawful for 2 justices of peace (having no interest in the premises) at the request of the landlord, his bailiff or receiver, to go upon and view the same, and to affix upon the most notorious part notice in writing, what day (at the distance of 14 days at least) they will return to take a second view; and if upon such second view, the tenant, or some person on his behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, the justices may put the landlord into possession; and the lease to such tenant, as to any demise therein contained only, shall become void. Provided (s. 17.) that such proceedings of the justices shall be examinable into in a summary way by the next justices of assize; and if they lie in London or Middlesex, by the judges of the courts of K. B. or C. B.; and if in the counties palatine, then before the judges thereof; and if in Wales, then before the courts of grand sessions; who are empowered to order restitution to be made to such tenant, together with his costs to be paid by the landlord, if they

13Edw. 1. st. 1.
c. 21. E. & I.

*A cessavit by
the chief lord
against his free-
hold tenant.*

14Geo. 2. c. 19.
s. 16. Eng.

*A summary re-
medy for rent
upon a vacant
possession.*

s. 17.

*Appeal from the
Justices.*

they shall see cause for the same; and in case they shall affirm the act of the justices, to award costs not exceeding £5. for the appeal. No statute in Ireland contains any similar provision.

CHAP. XVI.

Of Disturbance.

THE writ *de secunda superoneratione pasturæ*, is given by the 13 Edw. 1. st. 1. c. 8. E. & I. which provides, that upon the second overcharge of pasture the plaintiff shall have remedy in this manner: if the admeasurement were before the justices, the plaintiff shall have a writ judicial, that the sheriff, the parties being summoned, shall inquire of the second surcharge, which if found, it shall be returned before the justices under the seals of the sheriff and jurors; and the justices shall award to the plaintiff damages, and they shall put into their estreat the value of the beasts which were put into the pasture, after such admeasurement, above the due number, and shall deliver the estreats unto the barons of the Exchequer, that they may thereof answer to the king: if such admeasurement be made in the county, a writ shall go out of the chancery, that the sheriff shall inquire of such surcharge, and that of the beasts put in above the due number, or of the value of them, he answer to the king at the exchequer: and all writs *de secunda superoneratione*, that pass out of chancery, shall be inrolled, and at the years end the transcripts shall be sent into the exchequer, under the chancellor's seal. The statutes which relate to the approving or enclosing commons have been already referred to in another place*. But the clause of the 13 Edw. 1. st. 1. c. 46. E. & I. is to be here stated which recites, that when one having no right of common usurpeth common whilst an heir is within age,

§ 1.

In what case a secunda superoneratione pasturæ shall be awarded.

13 Edw. 1. st. 1. c. 8. E. & I.

* Vide v. 1. p. 433.

13 Edw. 1. st. 1. c. 46. E. & I.

or

Usurpers of common shall not have writ of novel disseisin if they be deforced.

3 & 4 Edw. 6.
c. 3. s. 4. Eng.

Treble damages in assize of novel disseisin of common of pasture.

In what cases the assize of novel disseisin is to be granted.

§ 2.

Three original writs of advowson.

13 Edw. 1. st. 1.
c. 5. E. & I.

Usurpation of churches during particular estates shall not prejudice them in reversion.

or a woman is covert, or whilst the pasture is in the hands of tenants in dower, by the curtesy, or for term of life, or years, or in fee-tail, and have long time used the pasture, many hold opinion that such pastures ought to be said to belong to the freehold, and that the possessor ought to have action by writ of *novel disseisin* if he be deforced of such pasture, and therefore declares or enacts, that such as have entered within the time in which an assize of *mort d' ancestor* lieth, if they had no common before, shall have no recovery by a writ of *novel disseisin*, if they be deforced. The 3 & 4 Edw. 6. c. 3. Eng. enacts that such persons as shall bring assize upon any branch of the 20 Hen. 3. c. 4. E. & I. or 13 Edw. 1. st. 1. c. 46. E. & I. (which respect the right of the tenants to bring assize of *novel disseisin*) and have judgment to recover, shall have their damages trebled by the court where such judgment shall be had: to which there is no corresponding statute in Ireland.

II. Next as to the *disturbance of patronage*: the 13 Edw. 1. st. 1. c. 5. E. & I. recites, that of advowsons of churches there be but 3 original writs, viz: one writ of right, and two of possession, *scilicet: darrein presentment* and *quare impedit*; and hitherto when any having no right to present, had presented to any church, whose clerk was admitted, he that was very patron could not recover his advowson but only by a writ of right; whereby heirs by negligence of their guardians, and by the fraud and negligence of tenants by the curtesy, tenants in dower, or for term of life, or for years, or in tail, were often disherited, or driven to their writ of right, and therefore provides, that such presentments shall not be prejudicial to the right heirs; but at the next avoidance after the heir shall be come to full age, or the advowson shall revert unto the heir, he shall have the same action by a possessory writ of advowson, which the last ancestor should have had at the last avoidance in his time, or before the demise for life, or in fee-tail. The same shall be observed in presentments of churches, being the inheritance of women under the power of their husbands; also bishops and other ecclesiastical persons shall be aided by this statute, in case any having no right present

unto

unto churches belonging to their prelacies, spiritual dignities, or parsonages, while such prelacies, &c. be vacant. Yet (by s. 2.) such persons shall not have the recovery aforesaid, saying that the guardians, &c. did faintly defend; because the judgment given in the king's courts shall stand in force until reversed as erroneous, or by assize of *darrein presentment*, or by inquest in *quare impedit*, be annulled by attain, or by certification, which shall be freely granted. And if the defendant allege plenarty of his own presentation, the plea shall not stay, so as the writ be purchased within 6 months, though he cannot recover his presentation within 6 months. Where an agreement is made between many claiming one advowson, and inrolled before the justices, or by fine, that one shall present the first time, and at the next avoidance another; and when one hath presented, and the second is disturbed by any party to the fine; he that is so disturbed, need not sue a *quare impedit*, but shall resort to the fine; and if the agreement be found in the roll, then the sheriff shall be commanded, that he give knowledge unto the disturber, that he be ready at some short day containing 15 days, or 3 weeks, (as the place be near or far) to shew wherefore the party disturbed ought not to present. And if he come not, or can nothing allege to bar the party of his presentation, by reason of any deed since the fine, he shall recover his presentation with damages. Where after the death of the ancestor that presented, the advowson is assigned in dower, or to the tenant by the curtesy, which do present, and after their deaths the true heir is disturbed to present when the church is void, it shall be in his election whether he will sue by *quare impedit*, or *darrein presentment*. The same shall be observed in advowsons for life, years, or in fee-tail. By s. 3. in *quare impedit* and *darrein presentment*, damages shall be awarded, to wit, if 6 months pass by such let, so that the bishop present, and the true patron loseth his presentation for that time, damages shall be awarded to 2 years value of the church against the disturber, and if he cannot recompense the damages, 2 years imprisonment; and if 6 months be not passed, half a years value, or half a year's imprisonment. By s. 4.

s. 2.

*Judgment. how reversed.**Plea of Plenarty.**Summary remedy where presentation by composition, &c.**Remedy for a disturbance after a particular estate ended.*

s. 3.

Damages in quare impedit and darrein presentment.

s. 4.

*Quare impedit
of prebends, &c.*

s. 5.

*Usurpation by
one coparcener
upon another.*

7 Ann. c. 18.
Eng.

*No usurpation
shall displace the
estate of the pa-
tron.*

1 Geo. 2. c. 23.
Ir.

*Delays in quare
impedit by es-
soins avoided.*

*When the king
presenteth to a
benefice in ano-
ther's right, his
title shall be ex-
amined.*

25 Edw. 3. st. 3.
c. 3. E. & I.

25 Edw. 3. st. 3.
c. 7. E. & I.
*The ordinary
may counter-
plead the king's
title for a bene-
fice fallen by
lapse.*

writs shall be granted for chapels, prebends, vicarages, hospitals and other houses; and when any person is disturbed to demand tithes in the next parish by writ of *indicavit*, the patron shall have a writ to demand the advowson of those tithes. By s. 5. when any advowson descendeth unto parceners, though one present twice, yet he that was negligent shall not be barred, but another time present. The 7 Ann. c. 18. Eng. provides, that no usurpation upon any avoidance in any church, vicarage, or other ecclesiastical promotion, shall displace the estate or interest of any person entitled to the advowson or patronage thereof, or turn it to a right; but he that would have had a right if no usurpation had been, may present or maintain his *quare impedit* upon the next or other avoidance. The 1 Geo. 2. c. 23. Ir. contains a corresponding provision: But this Irish statute recites, that proceedings upon writs of *quare impedit* are subject to great delays and vexations, by reason of essoins allowed in such writs; and therefore provides, that no more than one essoin shall be cast or allowed in any writ of *quare impedit*; but the defendant being duly summoned to appear upon the day mentioned in the writ, and not appearing by himself or his attorney, an attachment shall immediately issue, and at the return of the said attachment, the grand distress. And this act also provides for enforcing in equity an account of the mesne profits, from the summons in *quare impedit* to the final judgment.

The provision of the statute *de prerogativa regis*, 17 Edw. 2. c. 8. E. & I. in favour of the king's right to presentation notwithstanding the lapse of 6 months, has been already stated, (vol. 1. p. 511) but on the other hand, the 25 Edw. 3. st. 3. c. 3. E. & I. provides, that when the king collates, or presents to any benefice in another's right, his title shall be well examined, and if found untrue before judgment, the collation, &c. shall be repealed, and the patron or possessor who shall so prove the false title, shall have writs out of chancery.

By the 25 Edw. 3. st. 3. c. 7. E. & I. when ordinaries have given a benefice by lapse, and the king taketh his suit against the patron, which percase will suffer that the king shall recover in deceit of the ordinary or the possessor;

possessor; in such, and in all cases like, where the king's right is not tried, the ordinary, or possessor, may counterplead the title taken for the king. And by the

13 Ric. 2. st. 1. c. 1. E. & I. if the king present to any benefice full of any incumbent, the presentee shall not be received by the ordinary till the king hath recovered his presentment by process of law; and if otherwise received, and the incumbent put out, such incumbent shall begin his suit within a year after the induction of the king's presentee: But by the 4 Hen. 4. c. 22. E. & I. the incumbent, so put out without due process, may begin his suit at any time after the year.

13 Ric. 2. st. 1.
c. 1. E. & I.

The king's presentee shall not be received to a church, full until he hath recovered by law.

4 Hen. 4. c. 22.
E. & I.

Incumbent put out by the king may sue within a year, or after.

The 13 Edw. 1. st. 1. c. 24. E. & I. contains a provision, that in like manner as a parson of a church may recover common of pasture by writ of *novel disseisin*, his successor shall have a *quod permittat* against the disseisor

A Quod permittat and juris utrum for a parson of a church.

13 Edw. 1. st. 1.
c. 24. E. & I.

or his heir; and in the same manner as a writ is granted, whether a tenement be the free alms of any church or lay fee, such writ shall also be made, whether it be the free alms of such a church or of another church.

And by the 14 Edw. 3. st. 1. c. 17. E. & I. parsons, vicars, and wardens of chapels, shall have their writs of *juris utrum* of tenements annexed, or given perpetually in alms to vicarages or chapels, and recover by other writs in their case, as parsons of churches or prebends.

14 Edw. 3. st. 1.
c. 17. E. & I.

By the 1 Mar. st. 2. c. 5. Eng. the statute of limitations 32 Hen. 8. c. 2. Eng. (*ante* p. 133.) shall not extend to any writ of right of advowson, *quare impedit*, as-

No limitation for writ of right of advowson, &c.

1 Mar. st. 2.
c. 5. Eng.

size of *darrein presentment*, nor *jure patronatus*; which exception is also contained in the 10 Car. 1. st. 2. c. 6. Ir.

10 Car. 1. st. 2.
c. 6. Ir.

CHAP XVII.

Of Injuries proceeding from, or affecting the Crown.

Right of the crown under inquests of office may be traversed.

36 Edw. 3. st. 1. c. 13. E. & I.

8 Hen. 6. c. 16. E. & I.

When land seized under inquest of office shall be let.

BY the 36 Edw. 3. st. 1. c. 13. E. & I. if any man will claim the lands seized into the king's hands, the escheator shall send the inquest into the chancery, within one month after the lands seized; and a writ shall be delivered to him, to certify the cause of his seizure into the chancery; and then the party shall be heard without delay to traverse the office, or otherwise shew his right, and from thence sent before the king to make a final discussion. And in case any come before the chancellor, and shew his right by good evidence, the chancellor shall let the lands in debate to the tenant, yielding thereof to the king the value, if it pertain to the king, so that he find surety that he shall do no waste nor destruction till it be judged. And by the 8 Hen. 6. c. 16. E. & I. no tenements seized into the king's hands upon such inquests shall be let to farm, till the inquests and verdicts be returned into chancery, or in the exchequer, but shall remain in the hands of the king, until the inquests and verdicts be returned, and a month after the return. If they which feel themselves grieved by such inquests, or be put out of their lands, come into chancery, and proffer to traverse the inquests, and offer to take the lands to farm; then the lands shall be committed to them, if they shew good evidence proving their traverse; to hold until the issue taken upon the traverse be discussed, and to render to the king the yearly value if it be discussed for the king. And if any letters patent of the lands be made to the contrary to any other person, or letting to farm within the month after the return, they shall be void. And the escheators and commissioners, upon pain of £20.

£20. half to the king, and half to the party at whose suit they shall be convict, shall return the inquests into the chancery, or into the exchequer, within a month after taking the same : and every man which will sue for the king shall have suit in this behalf. And by the 18 Hen. 6. c. 7. E. & I. in case any escheator take any office, and return not the same in the chancery or exchequer, in the month after the taking, he shall incur the pain of £40. which he shall forfeit by the 8 Hen. 6. c. 16.* and he shall be bound to pay the king as much as he is endamaged because of not returning such office. And the chancellor shall call to him the treasurer in letting such farms. By the 18 Hen. 6. c. 6. E. & I. no letters patent shall be made of any lands, before an inquisition of the king's title be found returned in the chancery or exchequer, if the king's title be not found of record ; nor within the month after the return, if it be not to them which profer their traverses as aforesaid ; and if any letters patent be made to the contrary they shall be void. By the 23 Hen. 6. c. 16. E. & I. if a man traverse any office taken before any escheator or commissioner, and thereof hath a *scire facias* against any patentee, no protection shall be allowed. And as to any grant or lease to be made to any person that shall traverse any such office, the statutes shall be observed. By the 1 Hen. 8. c. 10. Eng. after office found afore any escheator or commissioner, and put into the chancery or exchequer, if any person which will tender a traverse to the said office, and desireth to have the lands to farm, and find surety, and sheweth evidence to the chancellor, according to the 8 Hen. 6. c. 16. come into the chancery within 3 months after the office so put into the chancery or exchequer, he shall be by the chancellor thereto admitted, and all other grants thereof be void. There is no statute in Ireland corresponding to the 1 Hen. 8. c. 10. Eng. By the 2 & 3 Edw. 6. c. 8. Eng. where any office or inquisition is found, omitting any title for term of years, by copy of court-roll, or other interest, every lessee or copy-holder, and every person that shall have any interest to any rent, common or profit *apprendre*, shall enjoy their leases and interests, rents, &c. as

Inquests of office to be returned into chancery or exchequer.

18 Hen. 6. c. 7. E. & I.

Penalty for not returning inquests.

*Post p 468.

18 Hen. 6. c. 6. E. & I.

No lands shall be granted by patent, until the king's title be found.

23 Hen. 6. c. 16. E. & I.

No protection to be allowed where scire facias against patentee.

1 Hen. 8. c. 10. Eng.

Person tendering traverse to find surety before land leased to him.

2 & 3 Edw. 6. c. 8. Eng.

Lessees for years, &c. not to be disturbed though titles not found.

s. 6.
Traverse by persons untruly found lunatics, &c.

s. 7.
Traverse to office entitling king to lands of traitors, &c.

s. 13.
Upon a traverse a scire facias shall be awarded against the king's patentees.

Writs of search.

s. 14.
Proviso.

10 W. 3. c. 10.
Ir.

Escheators, how appointed.
 14 Edw. 3. st. 1.
 c. 8. E. & I.

&c, as they might have done in case there had been none such office or inquisition found, and as they ought to have done in case such lease, &c., had been found in such office or inquisition. [*And by s. 6. if any person be untruly found lunatic, idiot, or dead, every person grieved by such office or inquisition shall have his traverse, as in other cases of traverse upon untrue inquisitions, or offices. By s. 7. where it is untruly found, that any person attainted of treason, felony, or *præmunire*, is seised of any lands, &c. at the time of such treason, &c. whereunto any other person hath just title of freehold; every person grieved thereby shall have his traverse or *monstrans de droit*, without being driven to any petition of right, and like remedy and restitution upon his title found or judged for him, as hath been used in other cases of traverse.] By s. 13. in all such cases as any person shall be enabled by this act to have any traverse, and shall pursue his traverse, he shall sue writs of *scire facias* against all such as shall have interest by the king or his patentees, as is requisite upon traverses or petitions heretofore pursued; and in every such *scire facias* the patentees or defendants shall have like pleas, as they had in any *scire facias* before this time awarded against any patentee in any case of petition; and upon every traverse pursued by virtue of this act, in such case as the party that shall pursue should by the common law have been put to sue by petition to the king, there shall be 2 writs of search granted, as like writs have been granted upon petitions made to the king. But by s. 14. if after any judgment given upon any traverse by virtue of this act, it shall appear by any matter of record, that the king hath any other title, the same shall be saved to the king. The 10 W. 3. c. 10. Ir. contains similar provisions. By the 14 Edw. 3. st. 1. c. 8. E. & I. there shall be as many escheators assigned as were when the king did take the governance upon him; and they shall be chosen by the chancellor, treasurer, and chief baron of the exchequer, taking to them the chief justices, if they be pre-

* This clause is omitted in the 10 W. 3. c. 10. Ir.

sent, in manner as the sheriffs. And by the 42 Edw. 3. 42 Edw. 3. c. 5. E. & I. no escheator shall be made unless he have *Qualification for escheators.* £20. of land in fee: and they shall do their offices in person: and if any other be chosen he shall be put out.

And by the 12 Edw. 4. c. 9. 12 Edw. 4. c. 9. E. & I. no man made escheator shall take upon him the office, unless the said *What lands an escheator must have; who he may make his deputy.* escheator have lands or rents in fee-simple, fee-tail, or for life, of the yearly value of £20. within the county whereof he shall be escheator: nor shall any such escheator sell or set to farm the said office, nor make any deputy but such for whom he will answer; the names of the deputies to be certified by the escheator by his letters patent to the treasurer and barons of the exchequer, within 20 days after such deputation made. And no such deputy shall take upon him the office, except such escheator have lands or rents to the aforesaid value. And if any person do contrary to the premises he shall forfeit £40. *Penalty.* the one half to the king, and the other half to such person as will sue by action of debt, wherein like process, costs and damages, shall be had as in other actions of debt. And the justices of peace shall have power to inquire, hear, and determine, every such forfeiture upon presentment in their sessions; in which like process shall be had, as upon indictments of trespass with force and arms against the king's peace. Provided that this act do not extend to any escheator of any city, borough, or town, having authority to make escheators within themselves by letters patent. *Proviso.*

And by the 1 Hen. 3. c. 8. 1 Hen. 3. c. 8. s. 4. Eng. no man shall be compelled to exercise the office of an escheator by any one patent over one year; and *Escheator to continue in office 1 year.* he that is once escheator shall not be made escheator again within 3 years: and if any be made escheator to *Not again appointed within 3 years.* exercise his office by one patent over the time of one year, or be made escheator within 3 years after, then after the said year ended, his patent shall be void. But *s. 5.* by s. 5. escheators in cities or towns corporate, or in the *Escheators in cities, &c. excepted.* duchies of Lancaster, Cornwall, and the counties palatine, and escheators made by persons having authority by reason of any franchises to make escheators, are 34 Edw. 3. c. 13. E. & I. excepted. By the 34 Edw. 3. c. 13. E. & I. every escheator

How an escheator shall take his inquest.

36 Edw. 3. st. 1. c. 13. E. & I.

Penalty for taking inquests otherwise.

8 Hen. 6. c. 16. E. & I.

By what persons escheators shall find an office.

23 Hen. 6. c. 16. E. & I.

Inquests, when to be held.

Fees of office.

1 Hen. 8. c. 8. s. 1. Eng.

No office to be returned but which is found by a jury.

tor shall take his inquests of office of people which be sufficiently inherited, and of good fame, and of the same county where the inquiry shall be; and the inquests so taken shall be indented betwixt the escheators and jurors; and if it be otherwise done, such inquests shall be void: and such inquests shall be taken in good towns, openly and not privily. And this statute is enforced by the 36 Edw. 3. st. 1. c. 13. E. & I. which further provides, that if any escheator do the contrary, he shall have 2 years imprisonment, and be ransomed at the king's will. And by the 8 Hen. 6. c. 16. E. & I. no escheator, nor commissioner, shall take inquests but of people returned and impanelled by the sheriffs, upon pain of £40. if he be thereof convict by examination, or otherwise, at the suit of the party; the one half to the king, and the other half to the party grieved, at whose suit he shall be convict. And the 23 Hen. 6. c. 16. s. 1. E. & I. also provides, that every escheator shall take his inquests of office by virtue of any writs, within the month after the deliverance of such writs: and such inquisitions shall be taken in good towns and in open places. And none of them shall take for the execution of such writs, in one county above 6s. 8d. or 13s. 4d. or above where his labour and costs shall require the same, so that the sum which he shall take do not exceed in all 40s. for the execution of any such writ in any county. And if any escheator do the contrary, he shall forfeit £40. And the king shall have the half of the said forfeiture of £40. and the party which will sue shall have the other half. And by the 1 Hen. 8. c. 8. s. 1. Eng. if any escheator or commissioner return into any of the king's courts, any inquisitions or offices concerning hereditaments, not found by the oaths of 12 men, and indented and sealed, such escheator, &c. shall forfeit for every such office, &c. £100. to the party grieved. And no man shall sit by virtue of any commission, to inquire of hereditaments, except he have hereditaments of the yearly value of 40 marks, above reprises, upon pain of £20. And it shall be lawful for all persons that be not sufficient of freehold at the time of any such commission to them delivered, to refuse to sit and inquire

by

by virtue of the same commission. By s. 2. upon process made against them out of the exchequer by virtue of the same commission, they shall be discharged upon their oaths for their non-sufficiency, without fine or fee. By s. 3. every escheator, &c. shall sit in open places, and shall suffer every person to give evidence openly to such inquests as shall be taken before them, upon pain of £40. *s. 2. Inquests to be openly taken.*

And by s. 4. no person which ought to return writs or precepts, shall return before escheators, &c. any person to inquire of any lands, &c. except every of the jury so returned have lands of the yearly value of 40s. within the shire, upon pain of forfeiture for every person 100s. *s. 4. Qualification for jurors.*

And the jury that shall be sworn before any escheator or such commissioner to inquire of lands, &c. shall receive the counterpane of the inquisition, sealed by the escheator or by such commissioner, and the same suffer to rest in the possession of the first person sworn in the jury; upon pain of every of the said persons that shall be sworn 20s. *Duty of jurors.*

And after a jury sworn be ready to give their verdict, the escheators, &c. shall receive the same without delay, upon pain of £100. and deliver the counterpane of the indenture to the jury, upon like pain. And if the clerk of the petty-bag will not receive the same office, and put it on the files within 3 days after it be returned or offered to him, he shall forfeit £40. and the commissioners or escheators to be discharged of the penalty of £40. limited by the statute for non-returning the same within the month; and the like law to charge the officers of the exchequer, which ought to receive inquisitions. *Escheators; And officers of the exchequer.*

And the commissioners or escheators shall be discharged of the penalty for non-returning of the inquisitions, so that the said escheators, &c. after the month, within another month, return the said office. And the clerk of the petty-bag shall certify the transcript of every such office to the exchequer, the next term following the receipt thereof, upon pain of forfeiture of 100s. And the party grieved shall have recovery of the said forfeitures of £100. by action of debt; and the residue of the other forfeitures in this act, the king shall have one moiety, and the party that will sue, &c.

the

s. 6.
Proviso.

the other moiety. Provided s. 6. that this act as to any penalty concerning the sufficiency of the escheator and jurors, extend not to any escheator in city or town corporate, nor to any other escheator made by any persons having privilege to make escheators, nor to any sheriff or bailiff for returning any person before any of the said escheators of less value; the escheators of the counties palatine of Lancaster and Chester in this proviso only excepted. And provided (s. 7.) that this act extend not to any justices of peace, for any thing concerning the commission of the peace, &c. To this statute there is no corresponding act in Ireland.

s. 7.
Proviso.

Penalty for escheators committing waste, &c.

36Edw.3. st. 1.
c. 13. E. & I.

By the 36Edw.3. st.1. c. 13.E.&I. lands seized into the king's hands, shall be safely kept without waste. And the escheator shall have no fee of wood, fish, venison, nor other thing, but shall answer to the king of the issues and profits yearly; and if he do otherwise, and thereof be attainted, he shall be ransomed at the king's will, and yield treble damages.

Non-payment of rent, &c. by kings patentees or tenants, when no forfeiture.

21Jac.1. c.25.
Eng.

15 Car. 1. c. 3.
Ir.

The 21 Jac. 1. c. 25. Eng. may be here referred to, which provides, that if any person, &c. having any lands by colour of any grant or lease made by the king, whereupon any rent or other duty is reserved, with condition of re-entry, *cesser*, or to be void for default of payment, &c. shall make default therein, and after such default made, such rent or other duty shall be answered to the king, or any other having authority to receive the same, before advantage of such forfeiture shall be taken, and before any commission awarded, or process issued touching the said forfeiture, no advantage shall be taken by the king for such forfeiture. And by s. 3. no person claiming under the king after such title of forfeiture, shall have any benefit by colour of such default; but every such estate shall be adjudged to continue as if no such default had been. The 15 Car. 1. c. 3. Ir. is the corresponding statute in Ireland.

The crown disabled to sue any person for lands, &c. where the right hath not accrued within 60 years.

By the 9 Geo. 3. c. 16. Eng. (which amends the 21 Jac. 1.c. 2.) the king shall not sue, impeach, question, or implead any person, &c. for any lands, &c. (other than liberties or franchises) or in any wise concerning the rents, revenues

revenues, issues or profits thereof, or make any title or claim to the same, by reason of any right or title which hath not first accrued within 60 years next before the commencing of such action, bill, plaint, information, commission, or other suit for recovering the same, unless the king, or other person, &c. under whom he shall claim, shall have been answered, by force of any such right to the same, the rents, &c. thereof, or the rents, &c. of any honour, manor, or other hereditament, whereof the premises in question shall be part, within the space of 60 years; or that the same have been duly in charge, [*or have stood *insuper* of record within 60 years:] and all persons, &c. and all claiming under them, according to their estates, shall quietly hold and enjoy against the king claiming by any title which hath not first accrued within 60 years, all lands, &c. (except liberties and franchises) which they, or those under whom they claim, have enjoyed, or taken the rents or profits of, by the space of 60 years next before the commencing such suit for recovering the same; unless the king, or some other person, &c. under whom the king claims, shall have been answered, by virtue of such title, the rents, &c. thereof, or that the same have been duly in charge, [*or have stood *insuper* of record] as aforesaid, within the said space of 60 years; [†and furthermore hold such lands, &c. against all persons claiming to have any estate or title to the same, by letters patent, or grants upon suggestion of concealment or wrongful detaining, or not being in charge, or defective titles, or by, from, or under such patentees or grantees; of or for which said lands, &c. no verdict, judgment, decree, judicial order upon hearing, or sentence of court, shall be had or given, in any court at Westminster, within 60 years next before the commencing of such suit for recovering the same.] Provided (s. 2.) that where the rents, &c. of any lands, &c. shall be in charge by or with any auditor, or other proper officer of the revenue, such rents, &c. shall be deemed to be duly in charge within this act. And by s. 3. this act shall not bar the king of any lands, &c. whereof any reversion or remainder now is in his majesty: nor of any reversion or remainder, or possibility of reversion or remainder

21 Jac. 1. c. 2.

Eng.

9 Geo. 3. c. 16.

Eng.

*Nor the rents,
&c. in charge
within 60 years.*

*These words
not in 48 Geo. 3.
c. 47. l.

†This clause
not in 48 Geo. 3.
c. 47. l.

s. 2

*In what cases
the rents, &c. of
lands shall be
deemed to be in
charge.*

s. 3.

*Cases wherein
reversions or re-
mainders in the
crown shall not
be impeached.*

s. 4.

*Limitation with
respect to grants
from the crown
of any limited
estate.*

*This clause
not in 48Geo.3.
c. 47. l.

s. 5.

Proviso.

†“Quit rents”
here added in
48Geo.3.c.47.
l.

s. 6.

Proviso.

s. 7.

remainder, in any of his majesty's progenitors or predecessors, which, by the determination of any limited estate of fee-simple, fee-tail, or other particular estate, hath fallen or shall fall in possession, within 60 years next before the commencing of any suit for recovering the same; nor of any right or title first accrued to his majesty, his ancestors, heirs, or successors, of any lands, &c. within 60 years next before the commencing of any suit for recovering the same. [*And by s. 4. this act shall not extend to any lands, &c. mentioned to be granted by any of his majesty's ancestors, or by any other under whom his majesty claimeth, to any person of any limited estate in fee-simple, or in tail, or other particular estate, which several estates (if good in law) have or ought to have first fallen or come in possession, or will or ought first to fall or come in possession, within 60 years next before the commencing of any suit for recovering the same; nor to any lands, &c. mentioned to be granted by any of his majesty's progenitors, &c. or by any other under whom his majesty claimeth, to any person in fee-tail, or other particular estate, whereof the reversion or inheritance (if such estate tail, or other particular estate, had been good in law,) should have continued in his majesty, or any of his progenitors, &c. or should or ought hereafter to be and continue in the king, within 60 years next before the commencing any action, &c. for recovering the same.] By s.5. all the said lands, &c. shall be holden of the king, and of other persons, &c. by the same tenures, services, fee-farms, chief rents,† heriots, and other duties, as the same ought to have been holden if the estates, rights, and interests, established by this act, had been before effectual in law. Saving (by s. 6.) to every person, &c. their heirs and successors, (other than the king, and other than all patentees or grantees of concealments, or defective titles, and all persons claiming under them,) all such rights, title, interest, claims and demands, in, to, or out of the said lands, &c. as they had or ought to have had before this act. By s. 7. where any fee-farm rent, or other rent, has been or shall be paid to the king, his predecessors, heirs, or successors, within

within 60 years next before any action shall be hereafter commenced for recovering the same, out of any lands, &c. of which the estates, rights, or interests being defective, are established by this act, the king shall from henceforth have and enjoy the said rents, and arrearages thereof, as amply as the same are or were enjoyed at any time within the said 60 years. [*By s. 8. nothing in this act shall extend to the right of any person in or to any lands &c. under any grants or letters patent from his majesty, or any of his predecessors, passed before the 1st. January 1769/so as such right be prosecuted with effect in one of his majesty's courts of record at Westminster, within one year from 1st January 1769. By s. 10. no putting in charge, nor standing *insuper*, nor taking or answering the farm rents, revenues, or profits, of any of the said lands, &c. by force of any letters patent, or grants of concealments, or defective titles, or of lands, &c. out of charge, or by pretext of any inquisitions, presentments, by reason of any commission to find out concealments, defective titles, or lands, &c. out of charge, shall be deemed to be a putting in charge, &c.; unless thereupon such lands, &c. have been or shall be upon verdict or demurrer in law adjudged, or upon a hearing decreed, for the king, within 60 years next before the commencing such action, &c. as aforesaid.] The 48 Geo. 3. c. 47. l. contains, with relation to Ireland, the same provisions as those of the 9 Geo. 3. c. 16. Eng. with such exceptions as are noted in the margin. But the 48 Geo. 3. c. 47. l. also contains this peculiar provision, (s. 6.) that where any rents or dues in the nature or lieu of rents now are or shall become payable to the king, out of, or chargeable upon, any rectories, vicarages, curacies, or other ecclesiastical benefices, or payable by the rectors, vicars, curates, or other ecclesiastical persons, the incumbents having respectively cure of souls, such rectors, &c. shall not be liable to pay to the king any arrear of such rent, &c. which shall have accrued or shall hereafter accrue due before the accruing of the title of such rector, &c.; and no distress, action, or other proceeding, shall be made or brought against such rector, &c. during his life,

or

Proviso for securing to the crown rents paid within a limited time.

s. 8.

*These clauses not in the 48 Geo. 3. c. 47. l.

s. 10.

What shall be deemed a putting in charge, &c.

48 Geo. 3. c. 47. s. 6. l.

Ecclesiastical persons not liable to arrears of rent incurred before accruing of their title.

or against his lands or goods after his death, for any such arrear.

§ 2.

In informations of intrusion the subject may plead general issue, and retain possession till trial.

21 Jac. 1. c. 14. Eng.
15 Car. 1. c. 1. Ir.

No scire facias where information may be brought.

II. As to informations on behalf of the crown: the 21 Jac. 1. c. 14. s. 1. Eng. recites, that the king by his prerogative may enforce the subject, in *informations of intrusion*, to a special pleading of his title; and enacts, that whensoever the king shall be out of possession 20 years, before any information of intrusion brought, the defendants may plead the general issue, and shall retain the possession until the title be found for the king. And by s. 2. where an information of intrusion may be brought on the king's behalf, no *scire facias* shall be brought, whereunto the subject shall be enforced to special pleading. The 15 Car. 1. c. 1. Ir. is the corresponding statute in Ireland.

§ 3.

Ancient statute of quo warranto.
6 Edw. 1. E. & I.

III. Though the statute of *quo warranto* (6 Edw. 1. E. & I.) seems rather to be an historical record, than an existing law; yet as it corresponds with the common law writ and proceeding, and as it has found a place in other abridgments, I shall therefore state it in this place. By s. 1 & 2. the prelates, earls, barons, and others, shall use their liberties after the form of the following writ: *Rex vic. salutem. Cum nuper in parlamento nostro apud Westmonasterium, per nos et concilium nostrum provisum sit et proclamatum, quod prelati, comites, barones, et alii de regno nostro, qui diversas libertates per chartas progenitorum nostrorum regum Angliæ habere clamant, ad quas examinandas et judicandas diem præfixerimus in eodem parlamento, libertatibus illis taliter uterentur, quod nihil sibi per usurpationem seu occupationem accrescerent, nec aliquid super nos occuparent. Tibi præcipimus, quod omnes illos de comitatu tuo libertatibus suis quibus hucusque rationabiliter usi sunt, uti et gaudere permittas in forma prædicta, usque ad proximum adventum nostrum per comitatum prædictum, vel usque ad proximum adventum justiciariorum itinerantium ad omnia placita in comitatu, vel donec aliud inde præceperimus: salvo semper jure nostro cum inde loqui voluerimus. Teste, &c.* In like manner writs shall be directed to sheriffs, &c. for every demandant, and the form shall be changed after the diversity of the

the liberty in this wise: *Rex vic. salutem. Præcipimus tibi, quod per totam ballivam tuam, videlicet, tam in civitatibus, quam in burgis, et aliis villis mercatoriis, et alibi, publice proclamari facias, quod omnes illi qui aliquas libertates per chartas progenitorum nostrorum regum Angliæ, vel alio modo, habere clamant, sint coram justiciariis nostris ad primam assisam, cum in partes illas venerint, ad ostendendum quomodo hujusmodi libertates habere clamant, et quo warranto: et tu ipse sis ibidem personaliter, una cum ballivis et ministris ad certificandum ipsos justiciarios super his et aliis negotiis illud tangentibus.* The clause "*præcipimus tibi quod publice proclamari facias*" is put in the writ of common summons of the justices in eyre, and shall have a præmonition of 40 days as the common summons hath. And if the party do not come, the liberties shall be taken into the king's hands, in name of distress, by the sheriff, so that they shall not use them until they come to answer before the justices. And when they come in their liberties shall be replevied: and if they challenge that they are not bound to answer without an original writ, if it appear that they have usurped any liberties, they shall be commanded to answer without writ: and if they will say that their ancestors died seised, they shall be heard, and the truth shall be inquired. And if it appear that their ancestors died seised, the king shall award a writ out of chancery in this form: *Rex vic. salutem. Sum. per bonos summon. talem, quod sit coram nobis apud talem locum in proximo adventu nostro in comitatum prædictum, vel coram justiciariis nostris ad proximam assisam, cum in partes illas venerint, ostensurus quo warranto tenet visum franciplegii in manerio suo de N; Or thus: quo warranto tenet hundredum de S in comitatu prædicto; or, quo warranto clamat habere thelonium pro se et hæredibus suis per totum regnum nostrum; et habeas ibi hoc breve. Teste, &c.* And they shall be adjourned unto short days, and have reasonable delays, according to the discretion of the justices, as in personal actions. And the clause underwritten shall be put in a writ of common summons in the circuit of the justices assigned to common pleas: viz. *Rex vic. salutem. Præcipimus tibi*
quod

quod publice proclamari facias, quod omnes conquerentes, seu conqueri volentes, tam de ministris et aliis ballivis nostris quibuscumque, quam de ministris et ballivis aliorum quorumcumque, et aliis, veniant coram justiciariis nostris ad primam assisam, ad quascunque querimonias suas ibidem ostendendas, et competentes emendas inde recipiendas secundum legem et consuetudinem regni nostri, et juxta ordinationem per nos inde factam, et juxta tenorem statutorum nostrorum, et juxta articulos iisdem justiciariis nostris inde traditos, prout prædicti justiciarii tibi scire fa-

18 Edw 1. st. 2.
E. & I.

Confirmation of such liberties as were enjoyed before the time of king Richard.

s. 2.

Where pleas of quo warranto shall be determined.

18 Edw 1. st. 3.
E. & I.

Old charters confirmed.

Informations in the nature of a quo warranto, may be exhibited against such as intrude into offices, &c.

9 Ann. c. 20. s. 4.
Eng.

ciant ex parte nostra. Teste, &c. By the 18 Edw. 1. st. 2.

E. & I. all which can verify by the country, or otherwise, that they and their ancestors, or predecessors, have used any liberties before the time of king Richard, or in all his time, and have continued hitherto so that they have not misused such liberties, shall (in a *quo warranto*) be adjourned unto a certain day before the justices, within the which they may go to the king with the record of the justices, and return; and the king, by letters patent, shall confirm their estate; and they that cannot prove the seisin of their ancestors, &c. in such manner, shall be judged after the law. And by s. 2. all judgments that are to be given in pleas of *quo warranto* by the justices at Westminster for the king, if the parties grieved will come again before the king, he of his grace shall give them such remedy as before: also pleas of *quo warranto* shall be pleaded and determined in the circuit of the justices.

And this statute is confirmed by the 18 Edw. 1. st. 3. E. & I. which further provides, that those who have old charters of franchise, shall have the same charters adjudged according to the tenor of them.

The 9 Ann. c. 20. s. 4. Eng. provides, that in case any person shall usurp, intrude into, or unlawfully hold any of the offices of mayor, bailiff, port-reeve, or other office, or the franchises of being burgesses or freemen, within any city, borough, or place, it shall be lawful for the proper officer in the court of king's bench, [the court of sessions of counties palatine, or the grand sessions in Wales,] with the leave of said courts, respectively, to exhibit informations in the nature of a *quo warranto*, at the

the relation of any persons desiring to prosecute the same, and who shall be mentioned in such informations to be the relators, against such persons so usurping, &c. the said offices or franchises; and if it shall appear to the courts that the several rights of divers persons to the said offices, &c. may properly be determined on one information, it shall be lawful for the said courts to give leave to exhibit one such information against several persons, in order to try their respective rights; and such persons shall appear and plead, as of the same term or sessions in which the informations shall be filed, unless the court shall give further time; and such persons who shall prosecute such informations, shall proceed thereupon with the most convenient speed. And by s. 5. in case any person against whom any information in the nature of a *quo warranto* shall in any of said cases be exhibited, be found guilty of an usurpation or intrusion, or unlawfully holding or executing any of said offices, &c. it shall be lawful for said courts as well to give judgment of *ouster*, as to fine such persons; and also to give judgment that the relators shall recover their costs; and if judgment be given for the defendants, they shall recover their costs against such relators; such costs to be levied by *Ca. Sa. Fi. Fa. or elegit.** The 19 Geo. 2. c. 12. Ir. contains similar provisions. The 32 Geo. 3. c. 58. Eng. further provides, that it shall be lawful for the defendants to any information in the nature of a *quo warranto*, for the exercise of any office or franchise, in any city, &c. whether exhibited with leave of the court, or by the attorney general, or other officer of the crown, on behalf of his majesty, and each of them severally, to plead that he or they had first actually taken upon themselves, or held or executed the office or franchise, which is the subject of such information, 6 years or more before the exhibiting of such information; such 6 years to be computed from the day on which any such defendant was admitted and sworn into such office, &c.; which plea may be pleaded either singly, or together with such plea as he might have pleaded before the passing of this act, or such several pleas as the court on motion shall al-

s. 5.

*Judgment of
ouster therein.**Costs to relator
or defendant.**Vide s. 6 & 7.
*post.*19 Geo. 2. c. 12.
Ir.32 Geo. 3. c. 58.
s. 1. Eng.*Defendants to
such informa-
tions may plead
the holding the
office, &c. for 6
years.*

low ; and if upon the trial of such information, the issue joined upon the plea aforesaid be found for any defendant, he shall be entitled to judgment, and to such costs as if a verdict and judgment had been given for him upon the merits of his title. Provided (s. 2.) that the pro-

s. 2.

Forfeiture of office within 6 years may be replied.

secutor of such information may reply to such plea any forfeiture, surrender, or avoidance, by the defendant, of such office or franchise happening within 6 years before the exhibiting of such information, whereon the defendant may take issue, and shall be entitled to costs as aforesaid. And by s. 3. if any person against whom any

s. 3.

Title derived under election, &c. not affected by defect of title in any person electing, &c. who was in the exercise of his franchise 6 years.

such information shall be exhibited, shall derive title under an election, nomination, swearing into office, or admission by any person, the title of such person against whom such information shall be exhibited, shall not be defeated or affected by reason or on account of any defect in the title of such person so electing, nominating, swearing into office, or admitting, in case such person, under whom title shall be derived, was in exercise *de facto* of the franchise or office, (in virtue of which he was so elected, &c.) 6 years previous to the filing of such information, and his title shall not have been questioned by any legal proceeding carried on with effect.

s. 4.

Corporation books to be open to the inspection of members.

[By s. 4. the mayor, bailiff, sheriff, town-clerk, or other officer of any corporation, having custody of, or power over, the records of the same, shall, upon the demand of any officer, or member of such corporation, on payment of 1s. permit such person, on any day except Christmas day, Good Friday, and Sunday, between the hours of 9 in the morning and 3 in the afternoon, to inspect the books and papers wherein the admission or swearing in of the freemen, burgesses, or other members or officers of such corporation, shall be entered, and to have copies or minutes of the admission, or the entry of swearing-in of any of such freemen, &c. upon paying 6d. for every 100 words for writing the same ; and if such mayor, &c. shall refuse to any person, hereby entitled to demand it, the inspection of such books, &c. such mayor, &c. shall forfeit £100. with full costs, to him who shall inform and sue for the same by action of debt, &c.

Penalty.

in

in any court of record at Westminster.] The 38 Geo. 3. 38 Geo. 3. c. 2. c. 2. Ir. has adopted those several clauses of the ^{Ir.} 32 Geo. 3. c. 58. Eng. except the last.

The 9 Ann. c. 20. Eng. also provides for rendering the proceedings upon writs of *mandamus* more speedy and effectual. By s. 1. where any writ of *mandamus* shall issue out of the king's bench, [the courts of sessions of counties palatine, or of grand sessions in Wales] to admit or restore any person to the office of mayor, bailiff, port-reeve, or other office within any city, borough, or place, or to the franchise of being burgess or freeman, such persons who by law are required to make a return, shall make their return to the first writ of *mandamus*. And by s. 2. as often as in any of the cases aforesaid any *mandamus* shall issue, and a return shall be made, it shall be lawful for the persons suing such *mandamus* to plead to or traverse all or any material facts contained in the return; to which the persons making such return shall reply, take issue, or demur; and such proceedings shall be had therein, as might have been had if the persons suing such writ had brought their action on the case for a false return; and if issue shall be joined on such proceedings, the persons suing such writ may try the same in such place as an issue joined in such action on the case might have been tried; and in case a verdict be found for the persons suing such writ, or judgment given for them, they shall recover their damages and costs, as they might have done in such action on the case; to be levied by *Ca. Sa. Fi. Fa.* or *elegit*; and a peremptory writ of *mandamus* shall be granted without delay, as if such return had been adjudged insufficient; and in case judgment shall be given for the persons making such return, they shall recover costs. Provided, (s. 3.) that if damages be recovered by virtue of this act, against any such persons making such return to such writ, they shall not be liable to be sued in any other action for making such return. By s. 6. it shall be lawful for the said courts to allow to such persons to whom any writ of *mandamus* shall be directed, [or against whom any information in the nature of a *quo warranto*, in any of the cases aforesaid,

Returns to writs of mandamus shall be made to the first writ.
9 Ann. c. 20. s. 1. Eng.

s. 2.

Pleadings and proceedings thereon.

s. 3.

Proviso.

s. 6.

Court may allow a convenient time to plead, &c. to mandamus or quo warranto.

said, shall be prosecuted,] or to the persons who shall prosecute the same, such convenient time to make a return, plead, reply, rejoin, or demur, as to the said courts shall seem just. By s. 7. the 4. Ann. c. 16 Eng. intitled "An act for the amendment of the law, and better advancement of justice," and all the statutes of *jeofails*, shall be extended to all writs of *mandamus*, and informations in the nature of a *quo warranto*. The 11 Geo. 1. c. 4. s. 2. Eng. further provides, that if in any city, borough, or town-corporate, no election shall be made of the mayor, or other chief officer, on the day, or within the time, appointed by charter, and no election shall be made pursuant to the direction prescribed by s. 1;* or such election being made shall afterwards become void; it shall be lawful for the court of K. B. on motion made, to award a *mandamus*, requiring the members of such city, &c. having a right to vote, to assemble themselves on a day and time to be prefixed in such writ, and to proceed to election, or to signify to the court good cause to the contrary; and thereupon to cause such proceedings to be made as in other cases of *mandamus* for the election of officers of corporations; and of the day and time appointed by the writ, public notice in writing shall, by such person as the said court shall appoint, be affixed in the market place, or some other public place, 6 days before the day appointed; and such officer shall preside in the assembly as ought to have presided at the election of such mayor, &c. in case the same had been made on the day herein prescribed. And by s. 3. in boroughs and towns corporate, where the mayor, &c. is to be nominated or sworn at a court-leet, or some other court, and it happens that no due nomination or swearing of such mayor, &c. shall be made, it shall be lawful for the court of K. B. upon motion, to award a *mandamus*, requiring the lord, or his steward, or other officer, to hold such court, at such time as shall be judged proper by the court of K. B. or to signify to the court good cause to the contrary, and thereupon to cause such proceedings to be made as in other cases of *mandamus* for holding of any court; and of the time appointed by such writ for holding

s. 7.
The 4 Ann. c. 16.
and statutes of
jeofails extended
to writs of man-
damus, &c.

11 Geo. 1. c. 4.
s. 2. Eng.
Mandamus for
the election of
mayors, &c.
in cities, &c.

* Vide vol. 1.
p. 428.

s. 3.

Where mayors,
&c. are to be no-
minated, &c. at
court-leets, K. B.
may award man-
damus for hold-
ing such court-
leets.

ing

ing such court, public notice in writing shall, by such person as the court of K. B. shall appoint, be affixed in the market or some other public place, 6 days before the day appointed; and where a nomination of persons in order to the election of any mayor, &c. is to be made at such court-leet or other court, after such nomination made, all other acts necessary to such election shall be done at such assembly, as the same ought to have been done if such election had been made on the day next after the expiration of the time prescribed by charter or usage.

And by s. 9. where any writ of *mandamus* shall issue out

s. 9.

of the king's bench in any of the said cases, the persons to whom said writ shall be directed, shall make their return to the first writ. The 19 Geo. 2. c. 12.

Return to be made to the first mandamus.

19 Geo. 2. c. 12.

Ir. has incorporated those provisions of the 9 Ann. Ir.

c. 20. and 11 Geo. 1. c. 4. with such exceptions and variations as have been already stated (vol. 1.

p. 429.) But the 12 Geo. 3. c. 21. Eng. has not been adopted or followed in Ireland; which statute pro-

12 Geo. 3. c. 21.
s. 1. Eng.

vides, that where any person shall be entitled to be admitted a citizen, burgess, or freeman, of any city or place, and shall apply to the mayor or other officer who hath authority to admit; and shall give notice specifying the nature of his claim to such mayor or other officer, that

Where mandamus shall issue to compel the admission of a freeman, &c. mayor, &c. shall pay costs.

if he shall not so admit such person a citizen, &c. within one month from the time of such notice, the court of K. B. will be applied to for a writ of *mandamus* to compel such admission; and if such mayor, &c. shall, after such notice, refuse or neglect to admit such person, and a writ of *mandamus* shall afterwards issue to compel such mayor, &c. to make such admission, and in obedience to such writ such person shall be admitted, then such person shall (unless the court shall see just cause to the contrary) obtain and receive from the said mayor, &c. all the costs to which he shall have been put, by a rule to be made by the court out of which such writ shall issue for the payment thereof, together with the costs of obtaining and enforcing the rule; and if the rule shall not be obeyed, then the same shall be enforced as other rules.

This act also provides (s. 2.) that the mayor, &c. of any city, &c. having the custody of, or power over, the re-

s. 2.

cords

Freemen to be admitted to inspect entries of admission, &c. and to take copies.

cords of the same, shall, upon the demand of 2 freemen or burgesses, permit such freemen or burgesses, and their agents, between 9 in the morning and 3 in the afternoon, to inspect the entries of the admission of freemen, burgesses, or other inferior corporators, and to take copies or extracts, paying for every inspection 2s. 6d.; and for every copy or extract not exceeding 72 words, 4d.; and so in proportion: And if any mayor, &c. shall refuse the inspection of any such entries, or to give copies or extracts, he shall forfeit £100. to any person who shall sue for the same; to be recovered by action of debt in any court of record at Westminster, in which action it shall be sufficient for the plaintiff to allege in his declaration, that the defendant is indebted to the plaintiff in the sum of £100. for money had and received to his use; provided that such action shall be commenced within one year after the cause shall have arisen.

CHAP. XVIII.

Of the pursuit of Remedies by Action; and first of the Original Writ.

*4 Return days of Trinity term.
32 Hen. 8. c. 21.
s. 1. Eng.*

*s. 2.
Commencement of Trinity term.*

THE commencement and duration of the terms, and days in bank on which all original writs must be made returnable, (commonly called the returns of the term,) are defined and regulated by the following statutes: By the 32 Hen. 8. c. 21. s. 1. Eng. in Trinity term shall be 4 common days of return only, viz. *in crastino sanctæ Trinitatis; in octabis sanctæ Trinitatis; in quindena sanctæ Trinitatis; and a die sanctæ Trinitatis in tres septimanas.* And there shall not be any days of return *in crastino sancti Johannis baptistæ, octabis sancti Johannis baptistæ, nor quindena sancti Johannis baptistæ.* And by s. 2. the term of holy Trinity shall yearly begin the Monday next after Trinity

Trinity Sunday, for the keeping of the essoins, profers, returns, and other ceremonies; and the full term shall begin the Friday next after [**Corpus Christi* day]. And the 2d & 3d days of return called *octabis sanctæ Trinitatis*, and *quindena sanctæ Trinitatis*, shall begin as in times past. And the fourth day called *a die sanctæ Trinitatis in tres septimanas*, shall begin from Trinity Sunday into 3 weeks next following, and shall have his return with the 4th day, as in other like days of return. The 11 Eliz. st. 3. 11 Eliz. st. 3. c. 2. Ir. **Trinity Sunday* in 11 Eliz. st. 3. c. 2. Ir.

2. Ir. is the corresponding statute in Ireland. By the 24 Geo. 2. c. 48. s. 1. Eng. (which amends the 16 Car. 1. c. 6. 24 Geo. 2. c. 48. s. 1. Eng.) †there shall be in Michaelmas Term 4 common days of return only, viz. the morrow of All Souls; the morrow of St. Martin; in 8 days of St. Martin; and in 15 days of St. Martin.* And by s. 2. the same days of returns shall be observed in all the high courts of record of the king. And the said term of St. Michael yearly shall begin upon the morrow of All Souls, (except it be on a Sunday, and then on the morrow next after) for the keeping of essoins, profers, returns, &c. in like manner as hath been used in the day of the return called, from the day of St. Michael in three weeks; and the full term of St. Michael shall yearly begin upon the [†4th day of the said morrow of All Souls,] except it be on a Sunday, and then on the morrow next after. By s. 3. if any writ of dower *unde nihil habet*, or writ of entry for common recoveries, or writ of right of advowson, or in any other real action, be returnable in the common pleas, in the morrow of All Souls, day shall be given in 15 days of St. Martin; if on the morrow of St. Martin, then in 8 days of St. Hilary; if in 8 days of St. Martin, then in 15 days of St. Hilary; if in 15 days of St. Martin, then on the morrow of the Purification; if in 8 days of St. Hilary, then in 8 days of the Purification; if in 15 days of St. Hilary, then in 15 days of Easter; if on the morrow of the Purification, then in 3 weeks from the day of Eas-

† By the 16 Car. 1. c. 6. Eng. there shall not be any days of return "*in octabis sancti Michaelis*," nor "*a die sancti Michaelis in quindecim dies*:" And by the 24 Geo. 2. c. 48. s. 2. Eng. the returns "*a die sancti Michaelis in tres septimanas*," and "*a die sancti Michaelis in unum mensem*," are further done away.

ter; if in 8 days of the Purification, then in one month from the day of Easter; if in 15 days of Easter, then in 5 weeks from the day of Easter; if in 3 weeks from the day of Easter, then on the morrow of the Ascension of our Lord; if in one month from the day of Easter, then on the morrow of the Holy Trinity; if in 5 weeks from the day of Easter, then in 8 days of the Holy Trinity; if on the morrow of the Ascension of our Lord, then in 15 days of the Holy Trinity; if on the morrow of the Holy Trinity, then in 3 weeks from the day of the Holy Trinity; if in 8 days of the Holy Trinity, then on the morrow of All Souls; if in 15 days of the Holy Trinity, then on the morrow of St. Martin; if in 3 weeks of the Holy Trinity, then in 8 days of St. Martin. By s. 4. in all writs of dower *unde nihil habet*, after issue joined, it shall not be needful to have above 15 days betwixt the *teste* and the return of the *verdict*, or any other process for trial of the issue. By s. 5. all writs and process to be made out of any of the king's courts at Westminster, and having day from the 4th day of the morrow of the Ascension, to the morrow of the Holy Trinity, shall be good notwithstanding there be not 15 days between the *teste* and the return of the said writs.* By s. 8. upon common recoveries in writs of entry, and writs of right of advowson, all writs of summons to warrant upon the appearance of the tenant to such writ of entry, and writ of right of advowson, shall be abridged to 4 returns inclusive. Provided (s. 9.) that in such cases as special days have been used to be given, it shall be lawful to the justices of the king's courts of record to appoint special days of returns. And by s. 10. the days of assize in *darrein presentment* and in a plea of *quare impedit* limited by the statute of Marlbridge, (52 Hen. 3. c. 12.) and also the days in attainr limited by the 5 Edw. 3. c. 6. E. & I. and 23 Hen. 8. c. 3. Eng. not contrary to this act, shall stand in force. The 52 Hen. 3. c. 12. E. & I. which is thus referred to by the 24 Geo. 2. c. 48. provides, that in *darrein presentment* and *quare impedit* days shall be given from 15 to 15, or from 3 weeks to 3 weeks, as the place shall be near or far. And in *quare impedit*, if the dis-

s. 4.

In dower, unde, &c. 15 days between teste and return of process sufficient.

s. 5.

When 15 days not necessary between teste and return of writ, &c.

s. 8.

Writs of summons to warrant abridged to 4 returns.

s. 9.

Courts to appoint special days of return.

s. 10.

Proviso.

52 Hen. 3. c. 12. E. & I.

Days of assize in darrein presentment and quare impedit.

* The clauses (s. 6 & 7) related to Michaelmas Term, 1752.

turber come not at the first day, nor cast essoin, he shall be attached to another day; at which day if he come not, nor cast essoin, he shall be distrained by the great distress; and if he come not then, by his default a writ shall go to the bishop; saving to the disturber his right at another time, when he will sue for it. The same law shall be observed of making attachments in all writs where attachments lie, as in distresses; so that the second attachment shall be made by better pledges, and afterwards the last distress. The 5 Edw. 3. c. 6. E. & I. and 23 Hen. 8. c. 3. Eng. which respect the proceedings in attain, are reserved for another place.

The 6 Geo. 1. c. 1. Ir. has preceded the 24 Geo. 2. c. 48. Eng.* in abridging Michaelmas Term, by limiting in like manner, the time of its commencement, to the 6th day of November or 4th day after the morrow of All Souls, and the number of its returns to four: but this statute provides, s. 3. that if any writ in any real action, (other than writs of entry for common recoveries, and writs of right of advowson, and writs of dower *unde nihil habet*), be returnable in the common pleas *in crastino animarum*, then day shall be given *in quindena Paschæ*: if *in crastino sancti Martini*, then *a die Paschæ in tres septimanas*; if *in octabis sancti Martini*, then *a die Paschæ in unum mensem*; if *in quindena sancti Martini*, then *in quinque septimanas Paschæ*; if *in octabis sancti Hillarii*, then *in crastino ascensionis Domini*; if *in quindena sancti Hillarii*, then *in crastino sanctæ Trinitatis*; if *in crastino purificationis beatæ Mariæ*, then *in octabis sanctæ Trinitatis*; if *in octabis purificationis beatæ Mariæ*, then *in quindena sanctæ Trinitatis*; if *in quindena Paschæ*, then *a die sanctæ Trinitatis in tres septimanas*; if *a die Paschæ in tres septimanas*, then *in crastino animarum*; if *a die Paschæ in unum mensem*, then *in crastino sancti Martini*; if *a die Paschæ in quinque septimanas*, then *in octabis sancti Martini*; if *in crastino ascensionis Domini*, then *in quindena sancti Martini*; if *in crastino sanctæ Trinitatis*, then *in octabis sancti Hillarii*; if *in octabis sanctæ Trinitatis*, then *in quindena sancti Hillarii*; if *in quindena sanctæ Trinitatis*, then *in crastino purificationis beatæ*

Commencement
and return days
of Michaelmas
term in Ireland.

6 Geo. 1. c. 1.

s. 1 & 2. Ir.

* Vide p. 182.

s. 3.

Days given in
certain real ac-
tions.

s. 4.
Days given in
writs of dower,
&c.

* These words
omitted.

s. 8.
Writs of sum-
mons ad war-
rantizandum:
abridged to 5
returns.

s. 5. 6. 10. & 11.

beatæ Mariæ; if *a die sanctæ Trinitatis in tres septi-
manas*, then *in octabis purificationis beatæ Mariæ*.
And by s. 4. if any writ of dower *unde nihil habet*,
or any writ of entry whereupon a common recovery
is to be sued, or writs of right of advowson, be re-
turnable *in crastino animarum*, then [* day shall be
given] *in octabis sancti Hillarii*; if *in crastino sancti
Martini*, then *in quindena sancti Hillarii*; if *in octabis
sancti Martini*, then *in crastino purificationis beatæ Ma-
riæ*; if *in quindena sancti Martini*, then *in octabis puri-
ficationis beatæ Mariæ*; if *in octabis sancti Hillarii*, then
in quindena Paschæ; if *in quindena sancti Hillarii*, then
a die Paschæ in tres septimanas; if *in crastino purificatio-
nis beatæ Mariæ*, then *a die Paschæ in unum mensem*;
if *in octabis purificationis beatæ Mariæ*, then *a die Paschæ
in quinque septimanas*; if *in quindena Paschæ*, then *in
crastino ascensionis Domini*; if *a die Paschæ in tres septi-
manas*, then *in crastino sanctæ Trinitatis*; if *in mense
Paschæ*, then *in octabis sanctæ Trinitatis*; if *in quinque
septimanas Paschæ*, then *in quindena sanctæ Trinitatis*;
if *in crastino ascensionis Domini*, then *a die sanctæ Trini-
tatis in tres septimanas*; if *in crastino sanctæ Trinitatis*,
then *in crastino animarum*; if *in octabis sanctæ Trinita-
tis*, then *in crastino sancti Martini*; if *in quindena sanctæ
Trinitatis*, then *in octabis sancti Martini*; if *a die sanctæ
Trinitatis in tres septimanas*, then *in quindena sancti Mar-
tini*. And by s. 8. upon common recoveries in writs of
entry, and writs of right of advowson, all writs of sum-
mons *ad warrantizandum*, upon the appearance of the
tenant to such writ of entry, and writ of right of advow-
son, shall be abridged to 5 returns, as in writs of dower
unde nihil habet hath been accustomed. This statute
contains clauses (s. 5. 6. 10. & 11.) similar to those of the
24 Geo. 2. c. 48. s. 4. 5. 9. & 10. *supra*; which clauses
were also contained in the 16 Car. 1. c. 6. Eng. which
latter statute the 6 Geo. 1. c. 1. Ir. has followed very
closely; save that this Irish statute abolished the days of
return *a die sancti Michaelis in quindecim dies*, and *in
tres septimanas sancti Michaelis*, and *a die sancti Michaelis
in unum mensem*: The days appointed to be given in
real actions by the 6 Geo. 1. do not therefore correspond
either

either with those contained in the 16 Car 1. c. 6. Eng. or 24 Geo. 2. c. 48. Eng.

The ancient statutes respecting essoins are to be here referred to. By the 52 Hen. 3. c. 13. E. & I. after a man hath put himself upon an inquest, he shall have but one essoin or one default; so that if he come not at the day given him by the essoin, or make default the second day, the inquest shall be taken by his default; and if such inquest be taken in the county before the sheriff or coroners, it shall be returned unto the king's justices at a certain day; and if the defendant come not at that day, upon his default another day shall be assigned; and it shall be commanded to the sheriff, that he cause him to come to hear the judgment if he will, according to the inquest; at which day if he come not, upon his default they shall proceed to judgment. In like manner it shall be done, if he come not at the day given unto him by his essoin. And by the 52 Hen. 3. c. 20. E. & I. in counties, hundreds, courts-baron, or other courts, none shall need to swear to warrant his essoin. By the 3 Edw. 1. c. 42. E. & I. in writs of assize, attainments, and *juris utrum*, after the tenant hath once appeared, he shall be no more essoined, but shall make his attorney if he will; and if not the assize or jury shall be taken through his default. And by the 13 Edw. 1. st. 1. c. 28. E. & I. it shall be observed in like manner against the demandants. By the 3 Edw. 1. c. 43. E. & I. parceners, or many that be jointly infeoffed, shall not have an essoin but at one day, no more than one sole tenant should have, so that they shall no more fourch, but only shall have one essoin: And by the 6 Edw. 1. c. 10. E. & I. the same shall be observed where a man and his wife be impleaded. And the 13 Edw. 1. st. 1. c. 27. E. & I. further provides, that after such time as any hath put himself upon inquest, one essoin shall be allowed at the next day, but at the other days the taking of the inquest shall not be delayed by essoins, whether he were essoined before or no. Neither shall any essoin be allowed after day given *prece partium*, where the parties consent to come without essoin.

After issue joined, but one essoin.

52 Hen. 3. c. 13. E. & I.

52 Hen. 3. c. 20. E. & I.

None need swear to warrant essoins.

3 Edw. 1. c. 42. E. & I.

When tenant shall not be essoined.

13 Edw. 1. st. 1. c. 28. E. & I.

Nor demandant.

3 Edw. 1. c. 43. E. & I.

No fourcher by essoin.

6 Edw. 1. c. 10. E. & I.

13 Edw. 1. st. 1. c. 27. E. & I.

No essoin after day given prece partium.

By

In what case essoin ultra mare shall not be allowed.

3Edw. 1. c. 44. E. & I.

13Edw. 1. st. 1. c. 17. E. & I.
Essoin de malo lecti when not allowed. E. & I.

12Edw. 2. st. 2. E. & I.
Certain cases wherein essoins do not lie.

By the 3 Edw. 1. c. 44. E. & I. the essoin of being over the sea shall not be wholly allowed, if the demandant will challenge it, and will be ready to aver, that he was in England the day of the summons, and 3 weeks after; but it shall be adjourned in this form, that if the demandant be ready at a certain day, by averment of the country, or otherwise as the court shall award, to prove that the tenant was within the four seas the day that he was summoned, and 3 weeks after, so that he might be reasonably warned, the essoin shall be turned into a default; and that is to be understood only before justices. And by the 13 Edw. 1. st. 1. c. 17. E. & I. in the circuit of the justices an essoin *de malo lecti* shall not be allowed for lands in the same shire, unless he that caused himself to be essoined be sick indeed; for if the demandant allege that the tenant is not sick, nor in such plight but that he may come before the justices, the exception shall be admitted; and if he can be so proved by inquest, the essoin shall be turned to a default. And such essoin shall not lie in a writ of right between two claiming by one descent. By the 12 Edw. 2. st. 2. E. & I. essoin lieth not because the land is taken into the king's hands: nor because the party is distrained by his lands. Essoin lieth not because any judgment is given thereupon if the jurors come. Essoin lieth not because the party was seen in court. Essoin of *ultra mare* lieth not, because the party hath been essoined *de malo veniendi*. It lieth not because the party hath essoined himself to another day. It lieth not because the sheriff was commanded to make the party to come. Essoin *de servitio regis* lieth not, because the party is a woman, unless she be a nurse or a midwife, or commanded *ad ventrem inspiciendum*. It lieth not in a writ of dower. It lieth not for that the plaintiff hath not found pledges. It lieth not because the attorney was essoined. It lieth not because the party hath an attorney in the matter. It lieth not because the essoiner confesseth that he is not in the king's service. It lieth not because the summons is not returned, or the party not attached, for that the sheriff hath returned *non est inventus*. It lieth not

not because the party another time was essoined *de servitio regis*, and hath not sent his warrant. It lieth not because he was re-summoned in assize of *mort d'ancestor* or *darrein presentment*. It lieth not because such a one is not named in the writ. It lieth not because the sheriff hath a precept to distrain the party to come. It lieth not, because the bishop was commanded to cause the party to come. It lieth not, for that the term is passed. And it is to be noticed, that essoins *de servitio domini regis*, are allowed after the *grand cape*, *petit cape*, and after distresses taken upon the lands and goods. By *stat. de visu et esson. incerti temporis*. E. & I. essoin of service of the king, lieth not in a writ of *novel disseisin*, in writ of dower *unde nihil habet*, in writ of *darrein presentment*, and appeal of the death of a man.

Stat. de visu et
esson. incerti
temporis.

CHAP. XIX.

Of Process.

FOR the avoiding of secret summons in real actions, the 31 Eliz. c. 3. s. 2. Eng. provides, that after every summons upon the land in any real action, proclamation of such summons shall be made, 14 days at least before the day of the return thereof, on a Sunday, at or near the most usual door of the church or chapel of the town or parish where the land doth lie;* which proclamation so made shall be returned with the names of the summoners: and if such summons shall not be so proclaimed and returned, then no *grand cape* to be awarded, but an *alias* and *pluries* summons, until a summons and proclamation shall be duly made and returned. The 10 Car.1.

*Proclamation of
the summons in
a real action
where to be.*

31 Eliz. c. 3. s. 2.
Eng.

10 Car. 1. st. 3.
c. 12. Ir.

* “ And in case there be no church nor chapel, then in the church-yard of the same parish, where the land doth lie,” here added in 10 Car. 1. st. 3. c. 12. Ir,

13 Edw. 1. st. 1.
c. 39. E. & I.

*How writs shall
be delivered to
sheriffs to be ex-
ecuted.*

*Non omittas
propter ali-
enam liberta-
tem.*

st. 3. c. 12. Ir. contains a similar provision. With a view to the due execution of process, the 13 Edw. 1. st. 1. c. 39. E. & I. provides, that such as fear the malice of sheriffs shall deliver their writs in the open county, or in the county where the collection of the king's money is; and may take of the sheriff or under-sheriff a bill, wherein the names of the demandants and tenants shall be contained; and at the request of him that delivered the writ, the seal of the sheriff, &c. shall be put to the bill, and mention shall be made of the day of the delivery of the writ; and if the sheriff, &c. will not put his seal to the bill, the witness of knights, and other credible persons, shall be taken, that put their seals to such bill. And if the sheriff will not return writs delivered, and complaint be made to the justices, a writ judicial shall go unto the justices assigned to take assizes, that they shall inquire by such as were present at the delivery of the writ, if they knew of the deliverance, and an inquest shall be returned; and if it be found that the writ was delivered to him, damages shall be awarded to the plaintiff or demandant; and by this means there shall be remedy when the sheriff returneth that the writ came so late that he could not execute the king's command. Also the treasurer and barons of the exchequer shall deliver to the justices in a roll, all the liberties in all shires that have return of writs: and if the sheriff answer that he hath made return to a bailiff of another liberty than is contained in the roll, the sheriff shall be punished as a disheritor of the crown; and if he return that he hath delivered the writ to a bailiff of some liberty that hath return, the sheriff shall be commanded *quod non omittat propter predictam libertatem*, but that he execute the king's precept; and that he do make known to the bailiffs to whom he returned the writ, that they be ready at a day to answer why they did not execute the king's precept; and if they come at the day, and acquit themselves, that no return was made to them, the sheriff shall be condemned to the lord of the liberty, and likewise to the party grieved, to render damages; and if the bailiffs come not at the day, or do come, and do not acquit themselves

themselves in manner aforesaid, in every judicial writ, so long as the plea hangeth, the sheriff shall be commanded that he omit not for the liberty, &c. Touching the article *quod de exitibus*, &c. if the plaintiff demand hearing of the sheriff's return, it shall be granted him; and if he offer to aver, that the sheriff might have returned greater issues, he shall have a writ judicial unto the justices assigned to take assizes, that they inquire in presence of the sheriff (if he will be there) of how great issues the sheriff might have made return, from the day of the writ purchased unto the day contained in the writ; and when the inquest is returned, if he have not afore answered for the whole, he shall be charged with the overplus by the estreats of the justices, and shall be grievously amerced. And rents, corn in the grange, and all moveables (except horse, harness, and household stuff,) are contained within the name of issues; and the sheriffs shall be punished by the justices for such false returns, and if they offend the third time, none shall have to do therewith but the king. Also false answers, that they could not execute the king's precept for the resistance of some great men, redound much to the dishonour of the king; and as soon as the bailiffs testify that they found such resistance, forthwith the sheriff taking the *posse comitatus* shall go in person to do execution; and if he find his under-bailiffs false, he shall punish them by imprisonment; and if he find them true, he shall punish the resisters by imprisonment; from whence they shall not be delivered without the king's special command. And if the sheriff find resistance, he shall certify to the court the names of the resisters, aiders; consenters, commanders, and favourers; and by a writ judicial, they shall be attached by their bodies to appear at the king's court, and if they be convict of such resistance, they shall be punished at the king's pleasure; neither shall any officer of the king's meddle in assigning the punishment, for the king hath reserved it specially to himself. This statute is confirmed by the 2 Edw. 3. c. 5. E. & I. which further provides, that the justices of assize shall have power to inquire of the defaults of sheriffs

*What shall be
accounted issues.*

*Sheriff to call
out the posse
comitatus in
case of resist-
ance.*

*2 Edw. 3. c. 5.
E. & I.*

Judges of assize to inquire, &c. of sheriffs' defaults.

riffs or under-sheriffs in not returning writs, and to award damages, having regard to the delay, and to the loss and peril, that may happen.

Sheriffs to appoint deputies at request of lords of liberties.

13 Geo. 2. c. 18. s. 6. Eng.

For the better and more speedy execution of process within particular franchises or liberties, the 13 Geo. 2. c. 18. s. 6. Eng. provides that the sheriff of every shire, (being no city or town made a shire) within which there is any franchise or liberty, the lord or proprietor whereof is entitled to the return of writs within such franchise, &c. shall, if required by such lord, &c. within one month after such request, appoint one sufficient deputy, or more, to be resident at some convenient place in or near such franchise, &c. to be for that purpose appointed by the lord chancellor and the chief justices of the K. B. and C. B. or any one of them, and who are hereby also authorized to direct what costs shall be paid therefore by such lord, &c. And such deputy shall reside at such place, and shall, in the sheriff's name, receive and open all such writs and process the execution or return whereof doth belong to such lord, &c. and in the name, and under the seal, of the sheriff, make and issue such warrant to such lord, &c. as is requisite for the due execution of such writ; and every such deputy shall, upon tender of any such writ, receive and open the same, and issue such warrant thereupon without delay, as the sheriff himself may do, without taking any other fee than is accustomed; upon pain that every such sheriff or deputy, guilty of wilful neglect, shall be liable to be punished as for a contempt of one of the said courts of Ch. K. B. or C. B. and shall likewise make satisfaction to the party receiving damage thereby. No Irish statute contains any corresponding provision.

In what actions the process of capias shall issue.

52 Hen. 3. c. 23. E. & I.

13 Edw. 1. st. 1. c. 11. E. & I.

25 Edw. 3. st. 5. c. 17. E. & I.

19 Hen. 7. c. 9. Eng.

The statutes 52 Hen. 3. c. 23. E. & I. and 13 Edw. 1. st. 1. c. 11. E. & I. which allow the process of *capias* to arrest the person in actions of account, have been already stated, (*ante* page 118): and by the 25 Edw. 3. st. 5. c. 17. E. & I. such process shall be made in a writ of debt and detinue of chattels, and taking of cattle, by writ of *capias*, and process of *exigent*, as is used in the writ of account. The 19 Hen. 7. c. 9. Eng. also provides,

vides that the like process shall be had in actions upon the case, as in actions of trespass, [*or debt]. And by the 23 Hen. 8. c. 14. Eng. the like process shall be had in every action brought on the 5 Ric. 2. st. 1. c. 8. (against forcible entries) as in a common action of trespass: and the like process shall be in every writ of annuity and covenant, as in an action of debt. The 10 Car. 1. st. 2. c. 15. Ir. has incorporated the provisions of the 19 Hen. 7. c. 9 Eng. and the 23 Hen. 8. c. 14. Eng. The process of *capias* is extended to popular actions, &c. by the 21 Jac. 1. c. 4. Eng. and the 10 & 11 Car. 1. c. 11. Ir. which have been already stated (*ante* page 117. 8.).

23 Hen. 8. c. 14
Eng.

10 Car. 1. st. 2.
c. 15. Ir.

Proclamations
required for
avoiding secret
outlawries.

31 Eliz. c. 3.
s. 1. Eng.

By the 31 Eliz. c. 3. s. 1. Eng. (which supersedes the 6 Hen. 8. c. 4. Eng.) in every action personal, wherein any writ of *exigent* shall be awarded out of any court, one writ of proclamation shall be awarded and made out of the same court, having day of *teste* and return as the said writ of *exigent* shall have, directed and delivered of record to the sheriff of the county where the defendant at the time of the *exigent* awarded shall be dwelling, which writ of proclamation shall contain the effect of the action; and the sheriff unto whom such writ shall be directed, shall make 3 proclamations, *viz.* one in the open county-court, one other at the general quarter sessions of the peace, in those parts where the defendant at the time of the *exigent* awarded shall be dwelling, and one other one month at least before the *quinto exact.* at or near the most usual door of the church or chapel of that town or parish where the defendant shall be so dwelling;† and if the defendant shall be dwelling out of any parish, then in such place of the parish, in the same county, next adjoining to the place of the defendant's dwelling, and upon a Sunday [§immediately after divine service.] And all outlawries had, and no writ of proclamation awarded and returned according to this statute, shall be void. The officer in whose office the said writs of *exigent* and procla-

§ These words
not in 11. 12 &
13 Jac. 1. c. 8.
Ir.

* These words omitted in the 10 Car. 1. st. 2. c. 15. Ir.

† "Or in case there be no church or chapel, in the church-yard of the town or parish where the defendant, at the time of the *exigent* awarded, shall be dwelling," here added in the 11. 12. & 13 Jac. 1. c. 8. Ir.

mations shall be made, shall take no more for making such writ of proclamation, and entering the same of record, but 6*d.*; and the sheriff for making the proclamation at the church-door, &c. shall have 12*d.* And this statute provides (s. 3.) that before any allowance of any writ of error, or reversing of any outlawry be had by plea or otherwise, by want of any proclamation according to this statute; the defendant in the original action shall put in bail, not only to appear and answer the plaintiff in the former suit in a new action, but also to satisfy the condemnation, if the plaintiff shall begin his suit before the end of 2 terms after the allowing the writ of error, or avoiding of the outlawry. By the 6 Hen. 8. c. 4. s. 2. Eng. the sheriff was required to execute the writ of proclamation, and to make due return, upon pain to forfeit such amercement as by the discretion of the justices should be set. And by s. 3. the officer in whose office the *exigent* is taken, shall make out the writs of proclamation. And this act provided (s. 5.) that all outlawries contrary thereto should be avoided by averment without writ of error. But these several clauses of the 6 Hen. 8. c. 4. are not directly adopted in the 31 Eliz. c. 3. The 11.12.&13.Jac.1. c. 8. Ir. has followed the 31 Eliz. c. 3. Eng. with such deviation as is noted in the margin: and contains also this peculiar provision (s. 3.) that if any attorney shall issue and make forth any writ of *exigent*, without issuing one writ of proclamation in manner aforesaid, together with said *exigent*, he shall forfeit 40*s.* one moiety thereof to the party grieved, that will sue for the same by bill or plaint in the court out of which such *exigent* shall issue, and the other moiety to the poor, to be distributed by the discretion of the judges of such court. And this Irish statute is amended by the 6 Ann. c. 15. Ir. which provides, that no *quinto exactus* shall be returned by any coroner upon the *exigent* in any personal action, until by the affidavit to be made by 2 witnesses, it appear to such coroner, that the proclamations *supra* have been made. And by s. 2. such affidavit shall, together with the *exigent*, be returned by the coroner to the clerk of the outlawries, to be filed; and no clerk of the outlawries shall issue or make out any *capias utlagatum* upon any

s. 3.

Bail upon writ
of error, to re-
verse outlawry.

6 Hen. 8. c. 4.
s.2. Eng.

s. 3.

s. 5.

11. 12 & 13
Jac. 1. c. 8. s.3.
Ir.

Penalty upon
attorney not is-
suing the procla-
mation.

6 Ann. c. 15. Ir.

Affidavit requir-
ed before return
of quinto ex-
actus.

s. 2.

any *exigent* so returned, till such affidavit be first filed with him, upon pain of forfeiting to the party grieved £40. to be recovered by action of debt in any court of record in Dublin, wherein, &c. And by s. 3. every sheriff, of any county or city, to whom any such writ of proclamation shall be directed and delivered, shall duly execute the same, and make true return thereof at the day appointed, together with such affidavit, upon pain of forfeiting such fine or amercement to the crown, as the judges or justices, before whom such *exigent* shall be returned, shall set. By s. 4. every declaration to be filed by any plaintiff in such outlawry against the defendant therein, after reversal thereof, and entering bail, as by the 11. 12. & 13. Jac. 1 c. 7. s. 3. is prescribed, shall be for the same cause or sum contained in such writ of proclamation. And if any plaintiff in such personal action, or his attorney, shall, after such reversal, file a declaration against such defendant for any cause or sum other than what is contained in such proclamation, such defendant may plead this law in bar. And by s. 6. if any outlawry shall be had against any person in any action personal, and no writ or proclamation awarded and returned as aforesaid, such outlawry shall be void, and may be avoided by averment or plea without suing any writ of error. This statute is peculiar to Ireland. By the 4 & 5 W. & M. c. 18. s. 3. Eng. no person outlawed in the king's bench for any cause, (treason and felony excepted) shall be compelled to appear in person, but may appear by attorney, and reverse the same without bail, except where special bail shall be ordered by the court. And by s. 4. if any person outlawed in said court, (other than for treason or felony) shall be taken upon any *capias utlagatum*, it shall be lawful for the sheriff, where special bail is not required by the court, to take an attorney's engagement under his hand, to appear for the defendant and reverse the outlawries; and thereupon to discharge the defendant: and where bail is required the sheriff may take security of the defendant by bond with one surety, or more, in double the sum for which bail is required, for his appearance by attorney, and to do such things as shall be required by the court. And by

No *capias utlagatum* to issue till affidavit, &c. filed.

s. 3.

Penalty for defaults of sheriff.

s. 4.

Declaration to be for the same cause as in writ of proclamation.

s. 6.

Outlawries contrary to this act void.

4 & 5 W. & M. c. 18. s. 3. Eng.

Outlawry may be reversed by attorney, except in treason or felony.

s. 4.

Persons taken upon a *capias utlagatum*, how discharged.

s. 5.

s. 5. if any person taken upon a *capias utlagatum* shall be committed to gaol for the default of security, whensoever the prisoner shall find security for his appearance by attorney at some return in the term then next following, to reverse the outlawries, &c. it shall be lawful for the sheriff to discharge the prisoner. No Irish statute contains any similar provisions.

No person arrested or held to special bail upon any process for less than £10.

12 Geo. 1. c. 29.

s. 1. Eng.

(19 Geo. 3. c. 70.

s. 1. Eng.)

By the 12 Geo. 1. c. 29. Eng. (as amended by the 19 Geo. 3. c. 70. Eng.) no person shall be held to special bail upon any process issuing out of any superior or inferior court, where the cause of action shall not amount to £10. And in all cases where the cause of action shall not amount to £10. and the plaintiff shall proceed by way of process against the person, he shall not arrest the body of the defendant, but shall serve him personally within the jurisdiction of the court, with a copy of the process; (for the service of which process, when issuing out of any inferior court, 2s. 6d. shall be allowed in costs;) and if such defendant shall not appear at the return of the process, or within 4 days after, the plaintiff may, upon affidavit being made and filed of the personal service of such process, (which affidavit shall be filed *gratis*) enter a common appearance or file common bail for the defendant, and proceed thereon as if such defendant had entered his appearance, &c. And by s. 2. in all cases where the cause of action shall amount to £10. as aforesaid, affidavit may be made and filed of the cause of action, (which affidavit may be made before any judge or commissioner of the court, out of which such process shall issue, or before the officer who shall issue such process, or his deputy,) and for such affidavit 1s. over the stamp duties shall be paid; and the sum specified in such affidavit shall be indorsed on the back of such writ or process, for which sum so indorsed the sheriff, &c. shall take bail, and for no more. But if any writ or process shall issue for £10. or upwards, and no affidavit or indorsement shall be made as aforesaid, the plaintiff shall not proceed

But defendant to be served with a copy of the process.

s. 2.

Affidavit to hold to special bail.

If no such affidavit, defendant to be served with a copy of process though debt above £10.

* By the 11 & 12 W. 3. c. 9. s. 2. Eng. no sheriff, or other officer, shall hold any person to special bail in Wales or the counties palatine, upon any process issuing out of the courts at Westminster, unless an affidavit be first made and filed of the cause of action, and that the same is £20. and upwards; and bail shall not be taken for more than the sum expressed in the affidavit.

to

to arrest the body of the defendant, but shall proceed in like manner as is by this act directed, in cases where the cause of action does not amount to £10. And by the 5 Geo. 2. c. 27. s. 1. Eng. in all cases where the cause of action shall not amount to £10. in any superior court, or to 40s. in any inferior court, all process and proceedings shall be in English, written in words at length, in common legible characters; and the defendants, (a copy of the process having been served) shall appear at the return thereof, or within 8 days after; and the affidavit of service of such process may be made before any judge or commissioner of the court out of which such process shall issue, or before the proper officer for entering common appearances, or his deputy; and is to be filed *gratis*. By s. 2. no attorney, or other person, shall have more than 5s. for making and serving a copy of such process issuing out of any superior court. Provided (s. 3.) that in particular jurisdictions the proper officer shall execute such process. By s. 4. upon every copy of such process, to be served upon any defendant, shall be written an English notice to the effect following, *viz.* “*A. B.* you are served with this process, to the intent that you may by your attorney appear in his majesty’s court of—— at the return thereof, being the—— day of—— (*as the case shall happen to be*) in order to your defence in this action:” For which notice no fee shall be demanded. And to prevent the expenses occasioned in small suits by the suing forth of special writs, this act provides (s. 5.) that where the cause of action shall not amount to £10. in any superior court, or to 40s. in any inferior court, no special writ or process, specially expressing the cause of such action, shall be issued; and every attorney or officer of such courts suing forth any such process, shall forfeit £10. to the person aggrieved. By the 38 Geo. 3. c. 1 s. 8. Eng. during the continuance of the restriction on payments in cash by the governor and company of the bank of England, no person shall be held to special bail upon any process issuing out of any court, unless the affidavit which shall be made for that purpose according to the provisions of the 12 Geo. 1. c. 29. *supra*, shall not only contain the several matters required

5 Geo. 2. c. 27.
s. 1. Eng.

Process under
£10. or 40s.
respectively to be
in English,

Appearance
thereof,

Affidavit of ser-
vice thereof.

s. 2.

Fee for serving,
&c. process.

s. 3.

Proviso.

s.

Form of notice
to the defendant.

s. 5.

No special writs
in small suits.

38 Geo. 3. c. 1
s. 8. Eng.

Affidavit to hold
to bail, to deny
tender in bank
of England
notes.

required by said act, but also that no offer has been made to pay the sum of money in such affidavit mentioned, in notes of the said governor and company, expressed to be payable on demand, (fractional parts of the sum of 20s. only excepted); and if any process be issued against any person, upon which such person might be held to special bail before the passing of the 37 Geo. 3. c. 45. Eng, (which contained a similar clause s. 9.) and no affidavit shall be made as aforesaid, such person shall not be arrested on such process, but proceedings shall be had against such person, as if no affidavit had been made for holding to special bail: provided, that if an affidavit shall be made upon which any person might have been held to special bail before the passing of the 37 Geo. 3. c. 45. and it shall be likewise sworn in such affidavit that such offer of payment has been made as aforesaid, so that the person cannot be held to special bail, it shall be lawful for the court out of which such process shall issue, or for any judge of such court, in a summary way, to order the defendant to cause notes of the said governor and company payable on demand, to the amount for which such person might have been held to special bail if this act had not been made, to be deposited in such manner as such court or judge shall direct, to answer the demands of the plaintiff in such action; and if such deposit shall not be made within the time limited by such order, after such notice thereof as shall thereby be directed to be given, it shall be lawful, upon affidavit duly made and filed that such deposit has not been made according to such order, to arrest such defendant and hold him to special bail, as if this act had not been made.

Court may order such notes, if tendered, to be lodged.

No person to be held to special bail, upon process out of superior court, where cause of action under £10. or under 40s. out of inferior courts. 43 Geo. 3. c. 53. s. 3. I.

By the 43 Geo. 3. c. 53. s. 3. I. * no person shall be held to special bail upon any process issuing out of the Courts of K. B. C. B. or Exc. in Ireland, where the cause of action shall not amount to £10 or upwards, nor out of any inferior court where the cause of action shall not amount to 40s. or upwards; and in all cases where the cause of action shall not amount to £10. or upwards in any of the said superior courts, or to 40s. or upwards

* By s. 1. the 21 & 22 Geo. 3. c. 18. Ir. so far as respects the entering parliamentary appearances upon the process of *subpoena* in the exchequer, is repealed.

in any such inferior courts, (and the plaintiff shall proceed by process against the person) he shall not arrest the body of the defendant, but shall serve him personally with a copy of the process; and if such defendant shall not appear at the return of the process, or within 8 days after such return, it shall be lawful for the plaintiff, upon affidavit being made and filed of the personal service of such process, (which affidavit shall be filed *gratis*) to enter a common appearance or file common bail for the defendant, and proceed thereon as if such defendant had entered his appearance, &c. And by s. 4. such affidavit of service shall and may be made before any judge or commissioner of the court out of which such process shall issue. By s. 5. where the cause of action shall amount to £10. or 40s. or upwards as aforesaid, affidavit shall be made and filed of such cause of action, (which affidavit may be made before any judge or commissioner of the court, &c.) and the sum specified in such affidavit shall be indorsed on such writ or process, for which sum so indorsed the sheriff or other officer, to whom such writ, &c. shall be directed, shall take bail, and for no more. And if any writ, &c. shall issue for £10. or upwards, and no affidavit or indorsement shall be made as aforesaid, the plaintiff shall not arrest the defendant, but shall proceed in like manner as is by this act directed, where the cause of action does not amount to £10. or 40s. And by s. 6. upon every copy of such process to be served upon any defendant, shall be written a notice to "the effect following: *A.B.* you are served with this process, to the intent that you may, by your attorney, appear in his majesty's court of——— at the return thereof, being the——day of——— (*as the case shall happen to be*) in order to your defence in this action:" which notice shall be signed by the attorney of the plaintiff, with his christian and surname, and thereunto shall be added his place of residence; for which notice no fee shall be taken. Provided (s. 7.) that no plaintiff shall enter a common appearance, or file common bail, for any defendant, unless the plaintiff or his attorney, or the attorney employed for the purpose of having the process personally

Process in such cases.

s. 4.

Affidavit of service.

s. 5.

Affidavit to hold to special bail.

If no such affidavit, defendant to be served with a copy of the process.

s. 6.

Notice to be annexed to process.

s. 7.

Affidavit to be made by plaintiff or his attorney in corroboration of process-server's affidavit.

s. 8.

Where process
cannot be per-
sonally served,
court may sub-
stitute other
service.

37 Geo. 3. c. 51.
s. 8. & 9. Ir.

Tender of bank
of Ireland notes
to be denied, in
affidavit to hold
to bail.

Process out of
K. B. or C. B. to
express cause of
action, or de-
fendant not held
to bail for more
than £40.

13 Car. 2. st. 2.
c. 2 s. 2. Eng.

s. 3.

Bond for ap-
pearance how
discharged.

personally served, shall make affidavit in writing, that such plaintiff, &c. knows the person so swearing to such service, and that such plaintiff, &c. believes that such process has been personally served on the defendant at such time as such person shall have sworn to, and in which affidavit the addition and place of residence of the person so swearing to such service shall be inserted; which affidavit shall be filed *gratis*. And by s. 8. whenever it appears to the court out of which the process issues, that all due diligence has been used to have the process of the court personally served, yet that under the special circumstances of the case, appearing to the court by the affidavit of the plaintiff or his attorney, or the attorney employed for the purpose of having the process personally served, that it was impossible to procure personal service, it shall be lawful for the court out of which the process issues, to substitute such other kind of service as to them shall seem fit. It is to be observed that this statute has not adopted the provisions of the 19 Geo. 3. c. 70. Eng. *supra*, which amends the 12 Geo. 1. c. 29. Eng. by extending to inferior courts the principle of not arresting or holding to special bail where the cause of action shall not amount to £10. The 37 Geo. 3. c. 51. Ir. which imposes restrictions on payments in cash by the bank of Ireland, contains provisions (s. 8. & 9.) similar to those of the 38 Geo. 3. c. 1. s. 8. Eng. *supra*.

By the 13 Car. 2. st. 2. c. 2. s. 2. Eng. no person who shall be arrested by colour of any process out of the court of K. B. or C. B. in which process the cause of action is not expressed particularly, and for which the defendant is bailable by the 23 Hen. 6. c. 9. E. & I. shall be compellable to give security for appearance in any penalty exceeding £40. lawful money of England. And by s. 3. upon appearance entered in the term wherein such process is returnable, by attorney, the bonds so given shall be discharged: and unless the plaintiff in such process shall put in his bill or declaration in some personal action, or *ejectione firmæ*, before the end of the term next following after appearance, a nonsuit for want of a declaration may be entered: and every defendant in such process

process shall have judgment to recover costs against such plaintiffs, to be recovered as is provided by the 23 Hen. 8. c. 15. Eng.* But by s. 4. this act shall not extend to arrests upon any writ of *capias utlagatum*, attachment upon rescous, or attachment upon contempt, or of any attachment of privilege, or other attachment for contempt, issuing out of either of said courts; and no sheriff nor under-sheriff, nor other officer, shall discharge any person taken upon any *capias utlagatum* without a *super-sedeas* first had; and upon the said writs of attachment such course shall be taken for security for appearance as hath been used. The 7 W. 3. c. 25. Ir. contains corresponding provisions. And the 6 Geo. 1. c. 6. s. 8. Ir. recites, that many oppressions, and great hardships and impositions are daily practised in the inferior courts of this kingdom, by means of actions taken out, without any just cause of suit, for great sums of money, on which the defendants, being often strangers or only travellers, are imprisoned for want of bail; and therefore enacts, that in every case where any action shall be commenced in the name of any person &c. in any court within any county of a city or county of a town, or within any borough, manor, or franchise within the kingdom, for any sum exceeding £10. in debt, detinue, trover, trespass, or case; no person shall be held to special bail, unless the plaintiff, his agent, or manager, or his attorney, shall before the mayor, &c. or officer authorized to hold court or pleas where such action shall be commenced, or his deputy, on application to him made by the defendant, make appear by bond, bill, note, deed, lease, or other specialty, or by some sufficient affidavit, that such plaintiff hath good cause of action against such defendant; and no defendant shall be obliged on any action of debt, to give special bail for any greater sum than what shall be made appear to be due to the plaintiff as aforesaid; nor on any action of detinue, trespass, trover, or case, but where the plaintiff, his attorney or agent, shall

Nonsuit for want of declaration before the end of next term after appearance.

s. 4.

Proviso.

7W. 3.c.25. Ir.

6 Geo. 1. c.6.

s. 8. Ir.

Defendant not held to bail in inferior courts for more than £10. unless plaintiff, &c. shew good cause of action.

In debt special bail for sum appearing due;

* The 7 W. 3. c. 25. Ir. here also refers to this English statute instead of the 10. Car. 1. st. 2. c. 17. Ir. which is taken from the 23 Hen. 3. c. 12. Eng.

*In other actions
defendant not
held to bail for
more than dou-
ble the demand.*

by affidavit make appear his cause of suit or action, and thereon the defendant shall not be held to give special bail, for more than double the sum, which shall appear by such affidavit to be the just demand of the plaintiff against him; and in all cases where cause of bail shall not appear in manner aforesaid, the defendant shall be discharged out of custody, on entering his appearance to such action by his attorney.

*No person to be
arrested for a
cause of action
not amounting to
such sum for
which he is now
by law liable to
be arrested, ex-
clusive of costs.*

43 Geo. 3. c. 46.
s. 1. E. & I.

s. 3.

*Defendant en-
titled to costs,
where plaintiff
shall not recover
the amount for
which he was
arrested.*

And for the more effectual prevention of frivolous and vexatious arrests and suits, the 43 Geo. 3. c. 46. s. 1. E. & I. enacts, that no person shall be arrested or held to special bail, upon any process issuing out of any court within England or Ireland, for a cause of action not originally amounting to such sum for which such person is by the laws now in being liable to be arrested and held to bail, over and above any costs incurred or become chargeable in the suing for or recovering the same, or any part thereof. And by s. 3. in all actions wherein the defendant shall be held to apecial bail, and wherein the plaintiff shall not recover the amount for which the defendant shall be so held to bail, such defendant shall be entitled to costs of suit; provided it shall be made appear to the court in which such action is brought, upon motion in court, and upon hearing the parties by affidavit, that the plaintiff had not any reasonable or probable cause, for causing the defendant to be arrested and held to special bail in such amount as aforesaid; and provided such court shall thereupon by rule or order direct such costs to be allowed to the defendant; and the plaintiff shall, upon such rule being made, be disabled from taking out execution for the sum recovered, unless the same shall exceed the taxed costs of the defendant; and in case the sum recovered be less than the amount of the costs of the defendant, then the defendant shall be entitled, after deducting the sum recovered by the plaintiff from the amount of his said costs, to take out execution for such costs in like manner as in other cases.

*No writ for slan-
der unless upon
affidavit of
plaintiff.*

To prevent vexatious arrests and proceedings in action of slander, the 31 Geo. 3. c. 32. Ir. enacts, that no writ or process in which slander shall be set forth as the cause
of

of action, shall issue, unless upon the affidavit of the plaintiff suing out such writ, to be made before a judge, or commissioner for taking affidavits, of the court out of which such writ shall issue, specifying such cause of action; and such writ shall not be marked for any greater sum than £200. in any case in which actual damages shall not be set forth and sworn to; and no defendant shall be held to special bail in any greater sum than £200. except where actual damages shall be set forth and sworn to by the plaintiff. Provided (s. 2.) that it shall be lawful for the court or judge before whom bail shall be taken, to admit the defendant to bail in any lesser sum than the sum sworn to, that such court, &c. shall think fit.

31 Geo. 3. c. 32.

1r.

Special bail in no more than £200. unless actual damage sworn to.

s. 2.

Admeasuring bail in the discretion of the judge.

By the 23 Hen. 6. c. 9. E. & I. sheriffs and other officers shall let out of prison all persons in their custody by force of any writ, bill, or warrant, in any action personal [or by cause of indictment for trespass] upon reasonable surety of persons having sufficient within the counties, to keep their days; persons in ward by redemption, execution, *capias utlagatum* or *excommunicatum*, surety of the peace, and all persons committed by any special commandment of the justices, excepted. And no sheriff, nor his officers, shall take any obligation for any cause aforesaid, or by colour of their office, but only to themselves, of any person, nor by any person, which shall be in their ward by course of law, but upon the name of their office, and upon condition that the said prisoners shall appear at the day contained in the writs, &c.; and if any sheriff, &c. take any obligation in other form, it shall be void; and he shall take no more for the making of such obligation, warrant, or precept, but 4d. And said sheriffs shall make yearly a deputy in the courts of Ch. K.B. C.B. and Exc. of record, before they return any writs, to receive all writs and warrants; and all sheriffs, or other officers, which do contrary to this ordinance, shall lose to the party grieved his treble damages, and shall forfeit £40. whereof the king shall have one-half to the use of his house, and the party that will sue the other half. And the justices of assize, justices of the one bench and of the other, and justices of peace, shall have

What persons may be bailed, what not.

23 Hen. 6. c. 9.
E. & I.

Form of bail bond.

Sheriffs shall make deputies to return writs, &c.

s. 2.
Proviso.

Commissioners
for taking special
bail, how ap-
pointed.

4 W.&M. c. 4.
s. 1. Eng.
* not in 7W.3.
c. 18. Ir.

† "Ireland" in
7W.3.c.18. Ir.

s. 2.

Bail taken in
the country how
justified.

* "Dublin" in
7W.3.c.18. Ir.

s. 3.

Judges of assize
may take bail.

7W.3.c.18.Ir.

29 Car. 2. c. 5.
s.1. & 2. Eng.

Commissioners
for taking affi-
davits how ap-
pointed.

have power to inquire, hear, and determine, of office without special commission, of all that do contrary to these ordinances. And if the sheriffs return upon any person, *cepi corpus*, or *reddidit se*, they shall be chargeable to have the bodies at the days of the returns as before this act. Provided (s. 2.) that the warden of the gaol of the fleet, and of the palace at Westminster, shall not be damaged by this ordinance.

By the 4W.&M. c.4. s.1. Eng. the judges of the courts of K. B. and C. B. respectively, or any two of them whereof the chief justice to be one, and the barons [*of the coif,] of the court of Exc. or any two of them, whereof the chief baron to be one, may by commissions under the seals of the respective courts, empower persons (other than attornies and solicitors) in all the counties [† of England and Wales, and town of Berwick,] to take recognizances of bails, in actions depending in said courts, as the justices and barons have used to take the same,‡ which recognizances shall be transmitted to some of the justices or barons, who, upon affidavit of the due taking, shall receive the same upon payment of the usual fees; which recognizances shall be of like effect as if taken *de bene esse* before any of the said justices or barons; for taking of which recognizances the persons so empowered shall receive 2s. By s. 2. the justices and barons, respectively, shall make such rules for justifying such bails, as to them shall seem meet, so as the cognizors be not compelled to appear in person in the courts, (unless they live in [* London or Westminster] or within 10 miles thereof,) but the same is to be determined by affidavits taken before the commissioners, who are hereby empowered to examine the bail upon oath. And by s.3. any judge of assize may take such recognizances, which shall be received without oath, upon payment of the usual fees. The 7 W. 3. c. 18. Ir. contains similar provisions. The 29 Car. 2. c. 5. Eng. may be here stated which provides, that the chief justice and other justices of the king's bench, or two of them, whereof the chief

‡ "For which commissions 13s. 4d. shall be paid, and no more," here added in the 7 W. 3. c. 18. Ir.

to be one; the chief justice of the common pleas, and the rest of the justices, or two of them, whereof the chief to be one; and the lord treasurer, chancellor, and barons of the exchequer, or two of them, whereof the lord treasurer, chancellor, or chief baron, to be one; may, by commissions under the seals of the respective courts, empower persons in the several counties to take affidavits concerning any thing depending in the said courts. And any judge of assize in his circuit may take affidavits concerning any thing depending in said courts, which shall be filed in the offices, and be made use of as other affidavits. And all persons forswearing shall incur the same penalties, as if taken in open court. By s. 3. the persons taking such affidavits shall receive only 12d. [*besides the king's duty, which shall be paid before such affidavit be filed.] The 4 W. & M. c. 4. Ir. contains similar provisions; and further provides, (s. 4.) that no affidavit taken by any such commissioners shall be made use of in said courts, unless the commissioner, or person that take the same, mention in the caption thereof as well as the day when, as also the place and county where the same was sworn. And by s. 5. affidavits taken as aforesaid shall not be read in any of said courts, before the same be filed in the respective courts. By the 43 Geo. 3. c. 46. s. 6. E. & I. if any person shall be taken or detained, or charged in custody, upon mesne process issuing out of any court of record at Westminster or Dublin, and shall be imprisoned or detained thereon, after the return of such process, it shall be lawful for such defendant in vacation time only, and upon due notice thereof to the attorney for the plaintiff, to put in and justify bail before any one of the justices or barons of the court out of which such process shall have issued; who may, if he shall think fit, thereupon order a rule to issue for the allowance of such bail, and may further order such defendant to be discharged out of custody by writ of *supersedeas*, or otherwise, according to the practice of such court, in like manner as the same is done

Judges of assize may take affidavits.

s. 3.

Fees limited.

4 W. & M. c. 4. s. 1. 2. & 3. Ir.

s. 4.

The day and place to be mentioned in the caption.

s. 5.

Affidavits not to be read till filed.

43 Geo. 3. c. 46. s. 6. E. & I.

Bail may be justified in vacation, before a justice or baron.

* The clause within the crotchets is not adopted in 4 W. & M. c. 4. Ir.

4 Ann. c. 16.
s. 20. Eng.
6 Ann. c. 10.
s. 18. Ir.

*Bail bond to be
assigned to
plaintiff.*

* These words
not in the 6 Ann.
c. 10. Ir.

6 Ann. c. 15. s. 5.
Ir.

*Bail how far
answerable.*

*Persons arrested
on mesne process
instead of giving
bail, may deposit
with the sheriff,
&c. the sum in-
dorsed on writ,
with £10. to an-
swer costs, &c.
43 Geo. 3. c. 46.
s. 2. E. & I.*

*Deposit how
disposed of.*

by an order of court in term time. By the 4 Ann. c. 16. s. 20. Eng. if any person shall be arrested by process out of the courts at Westminster at the suit of a common person, and the sheriff or officer taketh bail, the sheriff, &c. at the request and cost of the plaintiff or his attorney, shall assign to the plaintiff the bail bond, or other security taken from such bail, by indorsing the same, and attesting it under his hand and seal, in presence of 2 witnesses, [*without stamp, provided the assignment be stamped before the action brought thereon.] And if the said bail-bond, &c. be forfeited, the plaintiff after assignment may bring an action thereupon in his own name: and the court may by rule give such relief to the plaintiff and defendant in the original action, and to the bail, upon the said bond, &c. as is agreeable to justice; and such rules of court shall have the nature of a defeazance to such bail-bond, &c. The 6 Ann. c. 10. s. 18. Ir. contains a similar provision. The 6 Ann. c. 15. s. 5. Ir. provides, that the bail in any action in the Four Courts, shall be answerable only in such particular action.

And whereas, it may happen that persons arrested upon mesne process may not be able to find sufficient sureties for their appearance at the return of the writ, and yet may be able to make a deposit of the money for which they are so arrested, together with a competent sum for costs; the 43 Geo. 3. c. 46. s. 2. E. & I. provides, that all persons who shall be arrested upon mesne process, within England or Ireland, shall be allowed instead of giving bail to the sheriff, to deposit in the hands of the sheriff, (by delivering to him, or his under-sheriff, or other officer to be by him appointed for that purpose,) the sum indorsed upon the writ by virtue of the affidavit for holding to bail in that action, together with £10. in addition to such sum to answer the costs of such action up to the time of the return of the writ; and also such further sum, if any, as shall have been paid for the king's fine upon any original writ; and shall thereupon be discharged from such arrest as to the action in which he shall so deposit the sum indorsed on the writ; and the sheriff shall, at or before the return of the writ, pay into the court in which such writ shall be returnable, the sum.

sum of money so deposited with him; and in case the defendant shall afterwards duly put in and perfect bail in such action, the sum of money so deposited, shall by order of the court, upon motion for that purpose, be repaid to such defendant; but in case the defendant shall not duly put in and perfect bail, the money so deposited, &c. shall by order of court, upon a like motion, be paid over to the plaintiff, who shall be, thereupon, authorized to enter a common appearance or file common bail for such defendant, if the plaintiff shall so think fit; such payment to the plaintiff to be made subject to such deductions, if any, from the sum of £10. deposited to answer costs, as upon the taxation of the plaintiff's costs, as well of the suit, as of his application to the court in that behalf, may be found reasonable.

II. Next as to the privilege of persons from arrests:

By the 50 Edw. 3. c. 5. E. & I. persons of holy church while they attend divine service in churches, churchyards, and other places dedicated to God, shall not be arrested by royal authority, or commandment of temporal lords, in violation of the liberties of holy church, upon grievous forfeiture, so as collusion be not found in the said persons of holy church. And by the 1 Ric. 2. c. 15. E. & I. if any shall arrest any person of holy church in churches or churchyards against the liberty of holy church, and thereof be convict, he shall have imprisonment, and be ransomed at the king's will, and make gree to the parties. Provided that the people of holy church shall not hold themselves within the churches or sanctuaries by collusion. The 8 Hen. 6. c. 1. E. & I. further provides, that the clergy to be called to the convocation by the king's writ, and their servants and familiars, shall enjoy such liberty and privilege in coming, tarrying, and returning, as the peers and commonalty of the realm called to parliament ought to enjoy.

By the 10 Geo. 3. c. 50. Eng. (which supersedes the 12 & 13 W. 3. c. 3. Eng. 2 & 3 Ann. c. 18. Eng. and the 11 Geo. 2. c. 24. Eng.) any person may, at any time, commence and prosecute any action or suit in any court of record, or court of equity, or of admiralty, and in all causes matrimonial and testamentary, and in any court

having

§ 2.

None shall arrest priests or clerks during divine service.

50 Edw. 3. c. 5. E. & I.

1 Ric. 2. c. 15. E. & I.

Penalty on such offenders.

8 Hen. 6. c. 1. E. & I.

Clergy of the convocation privileged as well as members of parliament.

Suits may be commenced at any time against persons having privilege of parliament.

10 Geo. 3. c. 50. s. 1. Eng.

having cognizance of causes matrimonial and testamentary, against any peer or lord of parliament of Great Britain, or any of the knights, citizens, and burgesses, and the commissioners for shires and burghs, of the house of commons of Great Britain, or against their menial or other servants, or any other person entitled to the privileges of the parliament of Great Britain; and no such action, suit, or proceeding thereupon, shall be impeached or delayed under colour of any privilege of parliament.* Provided (s. 2.) that nothing in this act shall

s. 2.

But the persons of members of the house of commons to be free from arrest.

s. 3.

Issues upon a distringas how to be disposed of.

s. 4.

s. 5.

Obedience of privileged persons to rules of court how enforced.

s. 6.

Scotland included.

3 Edw. 4. c. 1.
Ir.

subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs, of the house of commons of Great Britain, to be arrested or imprisoned upon any such suit, &c. And by s. 3. whereas the process by *distringas* is dilatory and expensive, the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay costs to the plaintiff, and the surplus to be retained until the defendant shall have appeared, or other purpose of the writ be answered. By s. 4. when the purpose of the writ is answered, the said issues shall be returned; or if sold, what shall remain shall be repaid to the party distrained upon. By s. 5. obedience may be enforced to any rule of K. B. C. B. or Exc. against any person entitled to privilege of parliament, by distress infinite. By s. 6. this act (and the 12 & 13 W. 3. c. 3.) shall extend to Scotland. By the 3 Edw. 4. c. 1. Ir. it was declared to be one of the privileges of parliament, that every minister, as well lords, proctors, as commons, should not

* By the 12 & 13 W. 3. c. 3. Eng. as amended by the 11 Geo. 2. c. 24. Eng. persons were only allowed to prosecute actions against persons having privilege of parliament, in the *intervals of sessions*, viz. from and immediately after the dissolution or prorogation of parliament until a new parliament should meet, and from and immediately after an adjournment of both houses of parliament for above the space of 14 days, until they should both re-assemble; saving however their privileges from arrest. The object of the 2 & 3 Ann. c. 18. Eng. was to provide that actions or suits against public officers, for any breach of trust, or misdemeanor, respecting such offices, should not be stayed by privilege of parliament: and this act also contained a saving for the privileges of peers and members of the house of commons from arrest.

be

be impleaded during 40 days before, and 40 days after the parliament. And this act was explained by the 6 Ann. c. 8. Ir. which declared and enacted, that the privilege of parliament should begin 40 days before the beginning or meeting of parliament, and continue during the sitting or adjournment, and 40 days after the prorogation or dissolution of parliament. But by s. 3. it shall be lawful for every person, during the continuance of privilege of parliament, to distrain the goods of any peer, lord of parliament, or member of the house of commons, for the arrears of any rent, duty, or service due to such person, and dispose thereof notwithstanding such privilege. And by s. 4. no peer, lord of parliament, or member of the house of commons, who shall be a trustee, guardian, executor, or administrator, shall have any privilege of parliament in any action or suit which shall be commenced against him as trustee, &c. in any court whatsoever. But by the 1 Geo. 2. c. 8. s. 1. Ir. any person may commence and prosecute any action or suit in any court of record at Dublin, or chancery, or exchequer, or admiralty, and in all causes matrimonial and testamentary in any court of prerogative, consistorial courts, courts of delegates, and all courts of appeal, against any peer or lord of parliament, or against any of the knights, citizens, and burgesses of the house of commons, or any of their menial or other servants, or other persons entitled to the privilege of parliament, from and after 14 days next following the dissolution or prorogation of any parliament, until 14 days before a new parliament shall meet; during which time said courts may proceed to give judgment, and to make final orders, decrees, and sentences, and award execution thereupon, any privilege of parliament notwithstanding. Provided (s. 2.) that this act shall not subject the person of any of the knights, citizens, or burgesses of the house of commons, or other person entitled to the privilege of parliament, to be arrested for the space of 40 days before the meeting, or 40 days after the prorogation or dissolution of parliament: nevertheless, if any person shall have cause of action or complaint against any peer or lord of parliament, such person, af-

6 Ann. c. 8.
s. 1. Ir.

Time of privilege defined.

s. 3.

Proceedings allowed during time of privilege.

s. 4.

Exception as to trustees, &c.

1 Geo. 2. c. 8.
s. 1. Ir.

Actions may be prosecuted against peers, commoners, &c. in the intervals of sessions.

s. 2.

Saving for privilege of person.

Mode of proceeding against privileged persons.

s. 3.

Where proceedings stayed by privilege, plaintiff not barred by statute of limitations, &c.

s. 4.

Proceedings against the king's debtors not stayed by privilege:

Save as to personal privilege.

s. 5.

Enclaw.

ter any dissolution or prorogation, until 14 days before a new parliament shall meet, may have such process out of the courts of K. B. C. B. and Exc. against such peer, &c. as he might have had out of time of privilege: and any person having cause of action against any of the knights, citizens, or burgesses, or other person entitled to privilege of parliament, may, after 14 days next following any such dissolution or prorogation, until 14 days after the meeting of parliament, prosecute such knight, &c. in K. B. C. B. or Exc. by summons and distress infinite, or by original bill and summons, attachment, and distress infinite, (which the respective courts are empowered to issue) until he shall enter a common appearance or file common bail. But by s. 3. where any plaintiff shall, by reason of privilege of parliament, be stayed from prosecuting any suit commenced, such plaintiff shall not be barred by any statute of limitation, or nonsuited, dismissed, or his suit discontinued for want of prosecution, but shall, after 14 days from the rising of the parliament, be at liberty to proceed.* By s. 4. no suit or proceeding against the king's original and immediate debtor, for the recovery of any debt or duty immediately due to the king, or against any person liable to render account to the king for any part of his revenue, or other original and immediate debt, or the execution of any such process, &c. shall be impeached or delayed by privilege of parliament; yet so that the person of such debtor or accountant, being a peer, shall not be liable to be arrested, or, being a member of the house of commons, shall not during the 40 days before the meeting, and 40 days after the dissolution or prorogation of parliament, be arrested by any such proceedings. Provided (s. 5.) that this act shall not give jurisdiction to any court to hold plea in any real or mixt action, in other manner than such court might have done before. This act appears to be taken

* The 6 Ann. c. 8. Ir. contained clauses (s. 2 & 5.) similar to those of the 1 Geo. 2. c. 8. s. 3 & 4. *supra*.

from

from the 12 & 13 W. 3. c. 3. Eng.* and the amendment which was the principal object of the 10 Geo. 3. c. 50. Eng. was adopted by the 11 & 12 Geo. 3. c. 12. Ir. which contains clauses similar to those of the 10 Geo. 3. c. 50. s. 1 & 2. Eng. (*ante* page 207. 8.): but this Irish statute which was continued to 24 June 1807, and to the end of the following session of parliament, by the 40 Geo. 3. c. 96. s. 3. Ir. has been suffered to expire. The 1 Geo. 2. c. 8. *supra* is explained and amended
 " by the 11 Geo. 2. c. 5. Ir. which declares and enacts, 11 Geo. 2. c. 5. s. 1. Ir.
 (s. 1.) that it shall be lawful for any person during the continuance of the privilege of parliament, to file any original bill in any court of equity, or to sue out any original writ, (without further proceeding on such bill or writ) against any person entitled to privilege of parliament. Bill may be filed, or original writ sued out, against privileged person. And by s. 2. no privilege of parliament shall be allowed in any suit or motion for obtaining an injunction to be restored to the possession of any lands, &c. the possession of which has been taken away by force, or has been obtained fraudulently by the tenant holding over his term, or by the tenant betraying the possession of his landlord, lessor, or other person: but it shall be lawful for any lessor, &c. dispossessed by force as aforesaid, to proceed for the recovery of his possession in such manner as he might have done, had such suit, &c. been commenced against any person not entitled to, nor being the servant, agent, or tenant of any person entitled to, the privilege of parliament. s. 2. No privilege in suit or motion for injunction to be restored to possession taken by force, &c. And by s. 3. it shall be lawful for any person during the time of the continuance of the privilege of parliament, to sue out and execute any replevin, and prosecute any suit thereon, against any person entitled to privilege of parliament, in order to be restored to the possession of any goods or chattels which may be distrained, taken away, or withheld, by any person entitled to the privilege of parliament, or by any person employed by or under s. 3. Replevin may be sued against privileged persons.

* The only material distinction may be collected from a reference to the note to page 208.

8 Geo. 1. c. 2.
s. 2. Ir.

*No privilege in
ejectment for
non-payment of
rent, suit for
overholding, or
to stay waste.*

39 & 40 Geo. 3.
c. 67. Eng.
40 Geo. 3. c. 38.
Ir.

*Privileges of
peers and com-
mons of Ireland,
how far saved at
the union.*

*All process
against ambassa-
dors, &c. or their
domestics, void.*
7 Ann. c. 12.
s. 3. Eng.

s. 5.

*But their ser-
vants to be regis-
tered.*

them, in such manner as if such suit had been commen-
ced against any person not entitled to the privilege of
parliament. The 8 Geo. 1. c. 2. s. 2. Ir. also provides,
that no privilege of parliament shall be allowed in any
ejectment brought for the recovery of any lands, &c. on
account of non-payment of rent, nor in any suit com-
menced against any person on account of his wilful
holding over any lands, &c. after the determination of
his term, contrary to the true intent and meaning of
the 11 Ann. c. 2. Ir. (*ante* Book 2. Page 468.) nor in
any suit or motion to obtain an injunction or writ of *estrep-
ment* to prevent waste. It may be proper to observe that
the 4th article of the act for the union of Great Britain
and Ireland (39 & 40 Geo. 3. c. 67. Eng. 40 Geo. 3. c. 38.
Ir.) which provides that the peers of Ireland shall be
sued and tried as peers, and shall enjoy all privileges of
peers as fully as the peers of Great Britain, save as
therein excepted, has been already stated, (vol. 1. p. 358.)
But this principle is not extended to the commoners who
sit on the part of Ireland in the united parliament.

The 7 Ann. c. 12. s. 3. Eng. declares, that all writs
and process sued forth or prosecuted, whereby the per-
son of any ambassador, or other public minister of any
foreign prince or state, (authorized and received as such
by the crown,) or the domestic, or domestic servant of
any such ambassador, &c. may be arrested or imprisoned,
or his goods distrained, seized, or attached, shall be ad-
judged void. Provided (s. 5.) that no merchant or tra-
der within the description of any of the statutes against
bankrupts, who shall put himself into the service of any
ambassador or public minister, shall take any benefit by
this act; unless the name of such servant be first regis-
tered in the office of one of the principal secretaries of
state, and by such secretary transmitted to the sheriffs of
London and Middlesex, or their under-sheriffs or depu-
ties, who shall, upon the receipt thereof, hang up the
same in some public place in their offices, whereto all
persons may resort, and take copies thereof, without fee.
To which there is no corresponding statute in Ireland.

The

The abuse of the prerogative of the king in granting special protections, is restrained by the 33 Edw. 1. st. 1. *The protection of the king's service traversed.* E. & I. which provides, that forasmuch as many purchase the protection of the king, affirming that they were out of the realm in the king's service, if the adversary will challenge the protection, and aver that they were within the four seas, and out of the king's service, in a place certain, so that they might have conveniently appeared, the challenge shall be entered, and the matter shall remain without day, according to the protections; and when it shall be re-summoned, the party shall demand judgment and hearing of the process, and shall offer to aver his challenge, if his adversary will abide it; and if the country pass against him that cast it, the protection shall be turned to a default, if he be tenant; and if he be demandant he shall lose his writ, and shall be amerced. And by the 25 Edw. 3. st. 5. c. 19. E. & I. *25 Edw. 3. st. 5. c. 19. E. & I.* forasmuch as the king hath made divers protections to the people which were bound to him in some debt, that they should not be impleaded of the debts which they owed to others, till they made gree to the king; notwithstanding such protections, the parties which have actions against their debtors shall be answered in the king's court; and if judgment be given for the plaintiff or demandant, the execution shall be suspended till gree be made to the king of his debt; and if the creditors will undertake for the king's debt, they shall be received, and shall have execution against the debtors of the debt due to them, and also shall recover as much as they shall pay to the king for them. By the 1 Ric. 2. c. 8. E. & I. *1 Ric. 2. c. 8. E. & I.* no protection, with the clause of *volumus*, shall be allowed for victuals taken upon the voyage whereof the protection maketh mention, nor in pleas of trespass, or other contract, made or perpetrate after the date of the protection. *In what cases a protection with a clause of volumus is not allowable.* By the 13 Ric. 2. st. 1. c. 16. E. & I. *13 Ric. 2. st. 1. c. 16. E. & I.* no protection, with clause of *profecturus*, shall be allowed in any plea whereof the suit is commenced before the date of the protection, if it be not in the voyage that the king himself goeth, or other voyages royal, or in the king's messages for business of the realm; but they shall make their

Protection quia profecturus, or quia moraturus, when not allowable.

their attornies in such pleas, or else tarry themselves: but the protection with clause *quia moraturus* shall be allowed as before; and if any tarry in the country without going to the service in which he is retained, over a convenient time that he hath any protection, or repair from the service, if the chancellor be informed, he shall repeal such protections, as it hath been used before. And

7 Hen. 4. c. 4.
E. & I.

by the 7 Hen. 4. c. 4. E. & I. where the wardens of prisons let debtors go at large, and purchase the king's

No protection allowable for a gaoler who letteth a prisoner escape.

protections, whereby the creditors be delayed; no protection shall be available, nor allowed in such case. The

18 Hen. 6. c. 4.
Ir.

18 Hen. 6. c. 4. Ir. also provides, that no protection with the clause *volumus—quia profecturus est ad partes Angliæ*,

No protection quia profecturus granted before the cause verified by oath.

or elsewhere, shall be sealed under the great seal of Ireland, before the party make oath in chancery, that the

cause within the protection comprised containeth truth:

And if any such protection be put forth, the plaintiff may

have averment to say, that the defendant after the date

of the protection, by the space of 6 weeks, had time to go

in the king's service, and was not letted by wind, nor other

reasonable matter; and if that be found, such protection

shall be holden for none. And if such protection be

allowed within the 6 weeks, and the party goeth not, and

is in no manner reasonably letted, the party against

whom such protection is allowed shall have, after the 6

weeks passed, a writ or bill of deceit against him for whom

the protection is allowed, in any of the king's courts, and

a writ or plaint of deceit in any court of franchise, and

shall recover double damages for the delay; and no protection shall be allowed in such writ, &c.

If party go not in 6 weeks, protection void.

Bill of deceit lies for party delayed thereby, and double damages.

§ 3.

Service of process on Sunday void, except in criminal cases.

29 Car. 2. c. 7.
s. 6. Eng.

III. By the 29 Car. 2. c. 7. s. 6. Eng. no person upon the

Lord's day, shall serve or execute any writ, process, or-

der, judgment or decree, (except in cases of treason, fe-

lony, or breach of the peace;) but the service of every

such writ, &c. shall be void; and the person so serving

&c. the same, shall be liable to the suit of the party

grieved, as if he had done the same without any writ, &c.

The 7 W. 3. c. 17. Ir. contains a corresponding pro-

vision.

7 W. 3. c. 17.
s. 7. Ir.

CHAP. XX.

Of Pleading.

TO the intent that writs of debt and account, and other such actions, may be brought in the proper counties, and directed to the sheriffs of the counties where the contracts arise; the 6 Ric. 2. st. 1. c. 2. E. & I. enacts, that if in pleas upon such writs it shall be alleged, that the contract was made in another county than is contained in the original writ, then such writ shall be abated.* But the 38 Geo. 3. c. 52. s. 1. Eng. provides, that in every action whether the same be transitory or local, which shall be prosecuted in any court of record at Westminster, [and in every indictment removed into the court of K. B. by *certiorari*, and in every information filed by his majesty's attorney or solicitor general, or by the leave of the court of K. B.] and in all cases where any person shall plead to or traverse any of the facts contained in the return to any writ of *mandamus*, if the venue in such action, &c. be laid in the county of any city or town corporate within England, or if such writ of *mandamus* be directed to any person, &c. it shall be lawful for the court in which such action, &c. shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue joined in such action, &c. to be tried by a jury of the county next adjoining to the county of such city, &c. and to award writs of *venire* and *distringas* accordingly, if the court shall think fit. To this act there is no corresponding statute in Ireland: But the 1 Geo. 3. c. 17. s. 10. Ir. provides, that no issue shall be tried by a jury of any city in any suit concerning tolls, duties, or customs, claimed by the corporation of such city; but every such issue shall be tried by a jury of an indifferent county, to be appointed by the court in which such suit shall depend.

§ 1.

If venue in the count does not agree with that in the writ, the plea to abate.

6 Ric. 2. st. 1. c. 2. E. & I.

38 Geo. 3. c. 52. s. 1. Eng.

In actions, &c. where venue laid in the county of any city, &c. court may change venue to adjoining county.

1 Geo. 3. c. 17. s. 10. Ir.

No issue concerning tolls to be tried in cities where questions arise.

* Vide 4 Hen. 4. c. 18. E. & I. ante page 14.

II. By

§ 2.

Suits not discontinued by the death of the king.

1 Edw. 6. c. 7.
s. 1. Eng.

s. 2.

Nor by death, &c. of justices :

s. 3.

Nor by preference of plaintiff to a name of dignity :

s. 6.

Nor by a new commission, &c. of the justices.

10 Car. 1. st. 2.
c. 14. Ir.

3 Edw. 1. c. 47.
E. & I.

Nonage of the heir of disseisor or disseisee shall not prejudice.

6 Edw. 1. c. 2.
E. & I.

In what case nonage of the plaintiff shall not stay an inquest.

13 Edw. 1. st. 1.
c. 40, E. & I.

II. By the 1 Edw. 6. c. 7. s. 1. Eng. any action between party and party, in any court of record, shall not be discontinued by the death of the king, but the process in every action shall stand good as if the king had lived : and all judicial process shall be made in the name of the king that shall reign, and the variance between the names of the kings shall not be material. And by s. 2. every assize of *novel disseisin*, *mort d'ancestor*, *juris utrum*, and attaint, which shall be arraigned or sued before any justices of assize, shall not be discontinued by death, new commission, association, or not coming of the justices. By s. 3. albeit any demandant or plaintiff shall be made duke, arch-bishop, marquis, earl, viscount, baron, bishop, knight, justice of one bench or the other, or serjeant at law, depending the action, yet no writ or suit shall for such cause be abateable. And by s. 6. no process or suit before justices of assize, [gaol delivery, *oyer* and *terminer*, justices of peace, or other the king's commissioners,] shall be discontinued by the making any new commission or association, or by altering of the names of the justices ; but the new justices and commissioners may proceed as if the old commissions had remained. The 10 Car. 1. st. 2. c. 14. Ir. contains corresponding provisions. By the 3 Edw. 1. c. 47. E. & I. if any purchase a writ of *novel disseisin*, and he against whom the writ was brought as principal disseisor dieth before the assize be passed, the plaintiff shall have his writ of entry upon disseisin against the heir of the disseisor of what age soever : in the same wise the heirs of the disseisee shall have their writs of entry against the disseisors, or their heirs, of what age soever, if the disseisee die before he hath purchased his writ : and the same shall be observed in the case of prelates, &c. And if the parties come to an inquest, and it passeth against the heir within age, he shall have an attaint of the king's special grace without giving any thing. And by the 6 Edw. 1. c. 2. E. & I. if a child within age be holden from his heritage, whereby he is driven to his writ, and his adversary cometh into court, and allegeth a feoffment, or pleadeth some other thing whereby the justices award an inquest, the inquest shall pass as well as if he were of full age. And by the 13 Edw.

Edw. 1. st. 1. c. 40. E. & I. where any doth alien the right of his wife, the suit of the woman, or her heir, after the death of her husband, shall not be delayed by the nonage of the heir that ought to warrantize; but let the purchaser tarry until the age of his warrantor to have his warranty. The 8 Geo. 1. c. 6. s. 10. Ir. provides, that where the heir, who shall be summoned in a *scire facias*, issued out in order to have execution on a judgment obtained in an action of debt, shall pray that the parol may demur during his nonage, the court in which such cause shall depend shall, on motion, assign 2 persons, or more, of the nearest relations of such minor, if any such shall appear to be fit persons for such guardianship; which guardians so appointed by the court, together with the guardian appointed by the last will of the ancestor of such heir, if such there be, shall, within such reasonable time as the court shall appoint, not being less than 6 months, plead to the said *scire facias* in behalf of such minor; and proceedings shall be had thereupon as if such plea had been pleaded by an heir of full age. Which provision is peculiar to this Irish statute.

A woman's suit shall not be deferred by minority of the heir.

8 Geo. 1. c. 6. s. 10. Ir.

If heir, summoned in scire facias on judgment in debt, prays that parol may demur, court shall assign guardians.

III. Another incident to pleading, is that of demanding a *view* in real actions: in respect to which the 13 Edw. 1. st. 1. c. 48. E. & I. provides, that view shall not be granted but where view is necessary; as if one lose land by default, and moveth a writ to demand the same land; and where one by an exception dilatory abateth a writ after the view, as by non-tenure, or mis-naming of the town, &c. if he purchase another writ, in this case, and in the case before mentioned, the view shall not be granted, if he had view in the first writ. In a writ of dower, where the demand is of land that the husband aliened to the tenant or his ancestors, though the husband died not seised, yet view shall not be granted. In a writ of entry also that is abated, because the demandant misnamed the entry, if he purchase another writ of entry, if the tenant had view in the first writ, he shall not have it in the second. In all writs also where lands be demanded by reason of a lease made by the demandant or his ancestor unto the tenant, and not to his ancestor,

§ 3.

In what cases the view of land is grantable.

13 Edw. 1. st. 1. c. 48. E. & I.

tor,

Stat. incert.
temp. E. & I.

In what cases
view sha'll not be
granted.

tor, as that which he leased to him being within age, *non compos mentis*, in prison, and the like, view shall not be granted; but if the demise were made to his ancestor, view shall be as before. By the statute *de visu terræ incerti temporis*, E. & I. view shall not be granted in a writ of ward, in a writ of customs and services, in a writ of advowson of a church, (but in case where there be more churches than one in a town, and all of one saint,) in a writ of dower, and in a *nuper obiit*.

§ 4.

What day shall
be given to him
that is vouched
to warranty.

52 Hen. 3. c. 26.
E. & I.

IV. Next as to *voucher* in real actions: By the 52 Hen. 3. c. 26. E. & I. none vouched to warranty before the justices in eyre in plea of land, shall be amerced because he was present when he was vouched, except the first day of the coming of the justices; but if the party vouched be within the shire, the sheriff shall be commanded to cause him to come within the 3d or 4th day, according to the distance of the place, as it was wont to be done; and if he dwell within the shire, he shall have reasonable summons of 15 days at least. And

3 Edw. 1. c. 40.
E & I.

Voucher to war-
ranty, and
counter-pleading
of voucher.

by the 3 Edw. 1. c. 40. E. & I. in writs of possession of *mort d'ancestor*, of *cosinage*, of *aiel*, *nuper obiit*, of intrusion, and other like writs, whereby lands are demanded which ought to descend, revert, remain, or escheat, by the death of any ancestor, or otherwise, if the tenant vouch to warranty, and the demandant counter-pleadeth him, and will aver by assize, or by the country, or otherwise as the court will award, that the tenant or his ancestor was the first that entered after the death of him of whose seisin he demandeth, the averment shall be received, if the tenant will abide thereupon; and if not he shall be further compelled to another answer, if he have not his warrantor present that will warrant him freely, and enter into the warranty; saving unto the demandant his exceptions against him, if he will vouch further, as he had against the first tenant. In all writs of entry which make mention of degrees, none shall vouch out of the line. And in other writs of entry where no mention is made of degrees, (which writs shall not be maintained but where the other writs of degrees cannot lie,) and in a writ of right, if the tenant vouch to warranty,

ranty, and the demandant will counter-plead him, and be ready to aver by the country, that he that is vouched, or his ancestors, had never seisin of the land, &c. since the time of him on whose seisin the demandant declareth, until the writ purchased and the plea moved, whereby he might have infeoffed the tenant or his ancestors, the averment shall be received, if the tenant will abide thereupon; and if not, the tenant shall further answer, if he be not present that will warrant him freely, and incontinent enter in answer; saving unto the demandant his exceptions against him, as against the first tenant: and the said exception shall have place in a writ of *mort d'ancestor*, and in other writs before named, as well as in writs that concern right; and if the tenant have a deed that compriseth warranty of another man, his recovery by a writ of warranty of charters shall be saved to him.

By the 13 Edw. 1. st. 1. c. 6. E. & I. like as the tenant should lose the land in demand, in case where he vouched

13 Edw. 1. st. 1. c. 6. E. & I.

and the vouchee could discharge himself of the warranty, in the same wise shall the warrantor lose where he denieth his warranty, and it be found against him that he is bound to warrantize. And if an inquest be depending

The penalty where the vouchee denieth his warranty.

between the tenant and warrantor, and the demandant will require a writ of *venire facias* to the jury, it shall be granted him. By the 20 Edw. 1. st. 1. E. & I. where

20. Edw. 1. st. 1. E. & I.

the tenant in a plea of land voucheth to warranty, and the demandant will aver that neither the vouchee, nor any of his ancestors, since the time that the ancestor of the demandant was seised, was in possession of the lands, his averment shall be admitted whether the party vouched be absent or present. And by the 14 Edw. 3.

Counter-plea of demandant admitted whether party vouched be present or absent.

st. 1. c. 18. E. & I. if the tenant vouch to warranty a dead man; and the demandants will aver that the vouchee is dead, or that there is none such, their averment shall be received.

14 Edw. 3. st. 1. c. 18. E. & I.

Voucher of a dead man.

V. To the head of *dilatory* pleas is to be referred the 34 Edw. 1. st. 1. E. & I. which enacts, that in assizes of *novel disseisin*, where the tenant doth plead that he holdeth the lands in demand jointly with his wife not named in the writ, and sometime with a stranger not named in

§ 5.

When the tenant in assize doth plead joint-tenancy, scire facias awarded to the joint-tenant.

the 34 Edw. 1. st. 1. E. & I.

the writ, and sheweth forth a deed testifying the same, and demandeth judgment of the writ; if the plaintiff will aver by assize, that the day of his writ purchased he that alleged the exception was sole tenant, so that neither his wife nor any other had any thing in the lands, the justices shall retain the deed, until the assize be tried thereupon. And they shall by writ under their *teste* let the party absent, whom the deed testified to have been jointly enfeoffed with the tenant, to understand that he be present at a certain day with the other tenant, to answer to the plaintiff as well upon the exception alleged, as of the lands demanded and put in view, if it shall so seem expedient to him; at which day if both the tenants come and justify the feoffment, they shall maintain the exception alleged by one of them, and further shall answer unto the assize, as though the original had been purchased against both of them jointly. And if it be proved by assize, that the exception was alleged maliciously, to delay the plaintiff of his right, so that they held not the same land jointly the day of the writ purchased, then albeit the assize pass for the tenants, yet they that allege the exception shall be punished by one year's imprisonment, from whence they shall not be delivered, without a grievous ransom. And let the justices not allow such an exception alleged by the bailiffs of any such tenants. And if he that allegeth the exception absent himself at his day, and the other that is named joint-tenant appear, although he disavow the deed, and say that he hath nothing in the lands, &c. nevertheless the assize shall be awarded against him that is absent by default; and if it be found by the assize, that they were not jointly seised, &c. and likewise that the tenant or any other named in the writ did disseise the plaintiff, then, having regard to the exception that was falsely alleged, and to the disseisin, the plaintiff shall recover his seisin, and double damages; and they that alleged the false exception shall have the punishment aforesaid; but if neither of the tenants come at the day, then, upon their default, the assize shall be awarded; and if it be found that the exception was truly alleged, the assize shall pass no farther, but the writ shall

*Penalty for such
false plea.*

shall be abated. The same order shall be observed in assizes of *mort d'ancestor*, and *juris utrum*. In other writs whereby lands are demanded, such process shall be made, that if at the first day that the parties appear, the tenant allege the exception of a joint feoffment, and the demandant will offer to aver by the country, that the day of the writ purchased he that allegeth the exception was sole tenant, the same process shall be observed until a jury have passed between them thereupon. And if it be found by the jury, that the exception was truly alleged, the writ shall abate; and if it be found that the exception was falsely alleged, and to the hindrance of the party, the demandant shall recover his seisin, and the tenant shall be punished by the pain aforesaid as to the imprisonment, and as to the damages according to the discretion of the justices. And another ancient statute (25 Edw. 3. st. 5. c. 16. E. & I.) provides, that by the exception of non-tenure of parcel no writ shall be abated, but for the quantity of the non-tenure alleged. The 4 Ann. c. 16. s. 11. Eng. provides, that no dilatory plea shall be received in any court of record, unless the party offering such plea do, by affidavit, prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true. The 6 Ann. c. 10. Ir. contains a corresponding provision.* By the 8 & 9 W. 3. c. 11. s. 7. Eng. if there be 2 or more plaintiffs or defendants, and one of them die, if the cause of such action shall survive, the writ or action shall not thereby abate; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiffs against the surviving defendants. The 9 W. 3. c. 10. s. 7. Ir. also provides, that if 2 or more persons shall be jointly plaintiffs in any action *against 2 or more persons likewise jointly named defendants, the death of one such plaintiff or defendant, or more, shall not abate such writ; but the same being suggested upon the record, it shall be lawful for the surviving plaintiff to proceed against the surviving defendant.

25 Edw. 3. st. 5. c. 16. E. & I.

Exception of non-tenure.

4 Ann. c. 16. s. 11. Eng.

6 Ann. c. 10. s. 11. Ir.

Dilatory plea to be verified by affidavit.

8 & 9 W. 3. c. 11. s. 7. Eng.

Action not abated by death of one joint plaintiff, or joint defendant, if cause survives.

9 W. 3. c. 10. s. 7. Ir.

In actions by joint plaintiffs against joint defendants, death of one plaintiff or defendant shall not abate the writ.

* *Vide* 8 & 9 W. 3. c. 21. s. 3. Eng. and 9 W. 3. c. 12. s. 3. Ir. vol. 1. p. 476.

§ 6.

*Mutual debts
to be set one
against the other*

2 Geo. 2. c. 22.
s. 13. Eng.

8 Geo. 2. c. 24.
s. 5. Eng.

*Set off, though
debts of a dif-
ferent nature.*

*Set-off when to
be pleaded.*

25 Geo. 2. c. 8.
s. 8. Ir.

*Limitations in
certain personal
actions.*

21 Jac. 1. c. 16.
s. 3. Eng.

VI. The 2 Geo. 2. c. 22. s. 13. Eng. provides, that where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue, or pleaded in bar, as the case shall require; so as at the time of pleading the general issue, notice be given of the particular sum or debt intended to be insisted on in evidence, and upon what account it became due. And by the 8 Geo. 2. c. 24. s. 5. Eng. mutual debts may be set against each other, either by being pleaded in bar, or given in evidence on the general issue, as in the 2 Geo. 2. mentioned, notwithstanding that such debts are deemed to be of a different nature; unless where either of the debts shall accrue by a penalty contained in any bond or specialty; and in all such cases the debt intended to be set off shall be pleaded in bar, in which plea shall be shewn how much is justly due on either side: and in case the plaintiff recover, judgment shall be entered for no more than shall appear to be justly due, after one debt being set against another. The 25 Geo. 2. c. 8. Ir. contains a clause (s. 8.) corresponding to the 2 Geo. 2. c. 22. s. 13. Eng. *supra*: but the amendment made by the 8 Geo. 2. c. 24. *supra*, has not been adopted by any Irish statute.

It was reserved for this place to state the several clauses of the statutes of *limitation*, which respect personal actions: the provisions which respect real actions, and suits upon penal statutes, &c. are to be found in other parts of this digest. By the 21 Jac. 1. c. 16. s. 3. Eng. all actions of trespass *quare clausum fregit*, all actions of trespass, detinue, action *sur trover*, and replevin, all actions of account, and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, shall be sued within the time hereinafter expressed,

pressed, *viz.* the said actions upon the case (other than for slander) and the said actions for account, and the said actions for trespass, debt, detinue, and replevin, and the said action of trespass *quare clausum fregit*, within 6 years after the cause of action; and the said actions of trespass, of assault, battery, wounding, or imprisonment, within 4 years after the cause of action; and the said actions upon the case for words, within 2 years after the words spoken. But by s. 4. if in any of the said

s. 4.

actions judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill; or if any of the said actions be brought by original, and the defendant therein be outlawed, and shall after reverse the outlawry; the plaintiff, &c. may commence a new action within a year after such judgment reversed or given against the plaintiff, or outlawry reversed. And by s. 7. if any person entitled

Limitation after judgment or outlawry reversed.

s. 7.

to any such action of trespass, detinue, action *sur trover*, replevin, actions of accounts, actions of debt, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, shall be at the time of such cause of action accrued, within the age of 21 years, *feme covert*, *non compos mentis*, imprisoned, or beyond the seas, such person shall be at liberty to bring the same actions within such times as are before limited after their being of full age, discoverd, of sane memory, at large, and returned from beyond the seas.

Infants, &c. excepted.

The 10 Car. 1. st. 2. c. 6. Ir. contains corresponding clauses. And by the 4 Ann. c. 16. s. 17. Eng. all suits in the admiralty for seamen's wages, shall be commenced within 6 years after the cause of such suits shall accrue.

10 Car. 1. st. 2. c. 6. Ir.

4 Ann. c. 16. s. 17. Eng.

But by s. 18. if any person entitled to any suit for seamen's wages be within the age of 21 years, *feme covert*,

Limitation in suits for seamen's wages.

s. 18.

non compos mentis, imprisoned, or beyond the seas, such persons shall be at liberty to bring the same actions, so as they take the same within 6 years after their being of full age, discoverd, of sane memory, at large, and returned from beyond the seas. And this statute provides

Proviso in case of nonage, &c.

s. 19.

s. 19.

*Limitation for
actions in case of
absence beyond
sea.*

6 Ann. c. 10.
s. 17. Ir.

8 Geo. 1. c. 4.
s. 2. Ir.

*Bonds, &c. to be
deemed satisfied,
unless some suit,
or payment on
foot thereof,
within 20 years.*

s. 7.

Proviso.

(s. 19.) that if any person [against whom there shall be any such cause of action for seamen's wages, or] against whom there shall be any cause of action of trespass, detinue, action *sur trover*, or replevin, or of action of account, or upon the case, or of debt grounded upon any lending or contract without specialty, debt for arrearages of rent, or assault, menace, battery, wounding, and imprisonment, be, at the time of any such cause of action accrued, beyond the seas, such person who is entitled to such action, shall be at liberty to bring the said actions against such person after his return from beyond the seas, so as he take the same after his return from beyond the seas, within such times as are limited for the bringing of the said actions by this act, and by the 21 Jac. 1. c. 16. *supra*. The 6 Ann. c. 10. s. 17. Ir. has followed this latter section of the 4 Ann. save so far as respects seamen's wages: But no Irish statute has prescribed any limitation for actions to recover seamen's wages, similar to the 4 Ann. c. 16. s. 18. *supra*. It is however to be observed, that all clauses and provisions contained in any statutes made in England or Great Britain, as equally concern the seamen of England and Ireland, or of Great Britain and Ireland, are adopted by the 21 & 22 Geo. 3. c. 48. Ir. No limitation is prescribed by any of these statutes for actions of debt on specialties; but by the 8 Geo. 1. c. 4. s. 2. Ir. if any person shall commence any suit, in law or equity, for recovery of any debt due by single bill or bond under hand and seal, or by judgment, statute staple, statute merchant, or recognizance, which shall have been due and payable 20 years before the commencement of such action, &c. the defendant may plead payment in bar of such action, &c.; unless the plaintiff, or those under whom he claims, hath or have commenced or prosecuted some action, &c. for the recovery of such debt, or shall prove that some interest or money hath been paid, or other satisfaction made on account thereof, within 20 years before such actions, &c. commenced. But by s. 7. (*ante* page 134) the rights of the king are excepted. This statute is peculiar to Ireland.

By

By the 4 Ann. c. 16. s. 4. Eng. it shall be lawful for any defendant or tenant in any action or suit, or for any plaintiff in replevin, in any court of record, with the leave of such court, to plead as many matters thereto as he shall think necessary for his defence. Provided (s. 5.) that if any such matter shall upon a demurrer joined be judged insufficient, costs shall be given at the discretion of the court; or if a verdict be found upon any issue in said cause for the plaintiff or demandant, costs shall be given in like manner, unless the judge who tried the issue shall certify that the defendant, or tenant, or plaintiff in replevin, had a probable cause to plead such matter which upon the said issue shall be found against him. And the 6 Ann. c. 10. Ir. contains corresponding clauses. The 8 & 9 W. 3. c. 11. s. 8. Eng. provides, that in all actions in any court of record upon any bond, or on any penal sum, for non-performance of any covenants, or agreements, the plaintiff may assign as many breaches as he shall think fit, and the jury upon the trial of such action shall assess not only such damages and costs as have been usually done, but also damages for such of the said breaches as the plaintiff shall prove; and like judgment shall be entered on such verdict as hath been usually done in such actions; and if judgment shall be given for the plaintiff on a demurrer, [*or by confession, or *nihil dicit*,] the plaintiff upon the roll may suggest as many breaches as he shall think fit, upon which shall issue a writ to the sheriff to summon a jury to appear before the justices of assize or *nisi prius*, to inquire of the truth of those breaches, and to assess the damages; in which writ it shall be commanded to the justices that they make return thereof: †and in case the defendant, after such judgment entered, and before any execution executed, shall pay into court to the use of the plaintiff, such damages, together with the costs, a stay of execution on the judgment shall be entered; or if by reason of any execution executed, the plaintiff, or his executors, &c. shall be satisfied all such damages ‡together with their costs, and all reasonable expenses for

Pleading double matter when allowed.

4 Ann. c. 16. s. 4. Eng.

s. 5.

Proviso. touching costs.

6 Ann. c. 10. s. 3. & 4. Ir.

8 & 9 W. 3. c. 11. s. 8. Eng.

In actions on bonds, &c. plaintiff may assign several breaches.

Jury to assess damages.

* "*Nihil dicit, non sum informatus, cognovit actionem, or the like,*" in 9 W. 3. c. 10. Ir.

Defendant paying damages, execution stayed.

‡ "*or the penalty of the bond, &c.*" added in 9 W. 3. c. 10. Ir.

† "And thereupon judgment shall be entered as in cases of writs of inquiry of damages" here added in 9 W. 3. c. 10. Ir.

Judgment to remain security for further breaches.

9 W. 3. c. 10.
s. 8 & 9. Ir.

Payment pleadable to actions on single bills, and judgments.

4 Ann. c. 16.
s. 12. Eng.

The like on bonds tho' payment not according to the condition.

s. 13.

Court may discharge defendant, if principal, &c. paid into court.

6 Ann. c. 10.
s. 12 & 13. Ir.

executing the execution, the body, lands, or goods of the defendant, shall be discharged from the execution; which shall be likewise entered upon record; but in each case such judgment shall remain as a security to answer to the plaintiff, his executors or administrators, such damages as may be sustained for further breach of any covenant in the same indenture, &c. contained; upon which the plaintiff may have a *scire facias* upon the judgment against the defendant, or against his heir, tenants, executors or administrators, suggesting other breaches, and to summon them to shew cause why execution shall not be had, upon which there shall be the like proceeding as was in the action of debt; and upon satisfaction, as aforesaid, of such future damages, costs, and charges,* all further proceedings on the judgment are again to be stayed, and so *toties quoties*. The 9 W. 3. c. 10. Ir. contains similar provisions.

By the 4 Ann. c. 16. s. 12. Eng. where an action of debt shall be brought upon any single bill, or where debt or *scire facias* shall be brought upon any judgment, if the defendant hath paid the money, such payment may be pleaded in bar: and where debt is brought upon any bond which hath a condition or defeazance to make void the same upon payment of a lesser sum, if the obligor, his heirs, executors, or administrators, have, before the action brought, paid the principal and interest due, though such payment was not made strictly according to the condition or defeazance, yet it may be pleaded in bar, and shall be as effectual as if the money had been paid at the day and place according to the condition, and had been so pleaded. And by s. 13. if at any time pending an action upon such bond with a penalty, the defendant shall bring into court the principal and interest due, and all costs expended in any suit in law or equity upon such bond, the money so brought in shall be deemed to be in satisfaction of the bond, and the court shall give judgment to discharge such defendant. The 6 Ann. c. 10. Ir. contains clauses precisely similar.

* "Or of so much of future damages as the remaining sum of the penalty of such bond or bill penal, after satisfaction for the damages formerly recovered, will extend unto, together with costs" here added in 9 W. 3. c. 10. Ir.

CHAP. XXI.

Of Issue and Demurrer.

BY the 27 Eliz. c. 5. s. 1. Eng. after demurrer joined and entered in any court of record, the judges shall give judgment according as the very right of the cause and matter in law shall appear, without regarding any imperfection, defect, or want of form, in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding; except those only which the party demurring shall specially set down with his demurrer. And by s. 2. after demurrers joined and entered, the court may amend all such imperfections, defects, and wants of form, other than those which the party shall specially set down with his demurrer. But by s. 3. this act shall not extend to any appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon them, nor to any action or information upon any popular or penal statute. The 10 Car. 1. st. 2. c. 11. Ir. is the corresponding statute in Ireland. The 4 Ann. c. 16. s. 1. Eng. further provides, that where demurrer shall be joined and entered in any suit in any court of record, the judges shall give judgment according as the very right of the cause and matter in law shall appear, without regarding any imperfection, omission, or defect, in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding, except those only which the party demurring shall specially set down with his demurrer as causes of the same, notwithstanding that such imperfection, &c. might have heretofore been taken to be matter of substance, and not aided by [*the 27 Eliz. c. 5.] *supra*;

§ 1.

*After demurrer joined what defects shall be amended by the court.*27 Eliz. c. 5.
s. 1 & 2. Eng.

s. 3.

*Exception as to appeals, indictments, and penal actions.*10 Car. 1. st. 2.
c. 11. Ir.4 Ann. c. 16.
s. 1. Eng.*Certain defects or errors only grounds of special demurrer.*

* 10 & 11 Car. 1. st. 2. c. 11. here referred to by the 6 Ann. c. 10. Ir.

so as sufficient matter appear in the pleadings, upon which the court may give judgment according to the right of the cause; and no advantage shall be taken of any immaterial traverse; or of the default of entering pledges; or of the default of alleging the bringing into court any bond or other deed mentioned in the pleading; or of the default of alleging of the bringing into court letters testamentary, or letters of administration; or of the omission of *vi et armis*, & *contra pacem*; or of the want of averment of *hoc paratus est verificare*, or *hoc paratus est verificare per recordum*; or of not alleging *prout patet per recordum*; but the court shall give judgment according to the very right of the cause, without regarding any such imperfections, or any other matter of like nature, except the same shall be specially shewn for cause of demurrer. And this act s. 7. contains the like exception as the 27 Eliz. c. 5. s. 3. *supra*. The 6 Ann. c. 10. Ir. is the corresponding Irish statute.

s. 7.

Proviso.

6 Ann. c. 10.
s. 1 & 7. Ir.

§ 2.

Proceedings to
be in English,
and in words at
length.4 Geo. 2. c. 26.
s. 1. Eng.

II. By the 4 Geo. 2. c. 26. s. 1. Eng.* all writs, process, and returns thereof, and proceedings thereon; and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates; and all patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines, and recoveries, and all proceedings relating thereto; and all proceedings of courts-leet, courts-baron, and customary courts; and all copies thereof, and all proceedings in any courts of justice within [†England, and in the court of exchequer in Scotland;] shall be in the English tongue, and shall be written in such common hand as acts of parliament are usually ingrossed in; the lines and words to be written as close at least as the said acts usually are, and not in Court-Hand, [‡nor abbreviated;] and every person offending against this act shall forfeit [§£50.] to any person who shall sue for the same.

* It was first provided by the 36 Edw. 3. st. 1. c. 15. E. & I. that all pleas should be pleaded, &c. in the English tongue, (and not in the French) and entered and inrolled in Latin.

† "In this kingdom," in 11 Geo. 2. c. 6. Ir.

‡ Vide 6 Geo. 2. c. 14. next page.

§ £20 by the 11 Geo. 2. c. 6. Ir.

by action of debt, &c. in any court of record [*in Westminster-hall, or court of exchequer in Scotland.] And by s. 4. all the statutes of *jeofailes* shall extend to all proceedings in courts of justice, (except in criminal cases) when the forms and proceedings are in English. But by s. 3. this act shall not extend to certifying beyond the seas any proceedings in the court of admiralty, but the proceedings may be certified in Latin as formerly. And the 6 Geo. 2. c. 6. Eng. also provides, that the 4 Geo. 2. c. 26. *supra*, shall not extend to the court of the receipt of his majesty's exchequer. The 6 Geo. 2. c. 14. s. 3 & 4. Eng. extends the provisions of the 4 Geo. 2. c. 26. *supra*, to the courts of great sessions and other courts in the principality of Wales. But by s. 5. provides, that all writs, &c. (as enumerated in the 4 Geo. 2. c. 26. s. 1.) in any courts of justice [within England, Wales, and Berwick upon Tweed, and in the exchequer in Scotland,] may be written or printed in a common hand, and with the like manner of expressing numbers by figures as have been commonly used, and with such abbreviations as are now used in the English language: nor shall any penalty be extended to the expressing proper names of writs or other process, or technical words, in the same language as hath been commonly used, so as the same be not in Court-Hand; and all prosecutions under 4 Geo. 2. shall be commenced within [†3 months.] The 11 Geo. 2. c. 6. Ir. contains provisions similar to the 4 Geo. 2. c. 26. 6 Geo. 2. c. 6. and 6 Geo. 2. c. 14. s. 5. *supra*: but the 17 Geo. 2. c. 8. s. 2. Ir. repeals the exception thereby made as to the court of the receipt of the exchequer.

s. 4.

Statutes of jeofailes to be extended to the English forms.

s. 3.

Proceedings in court of admiralty excepted.

6 Geo. 2. c. 6, Eng.

Court of receipt of Exc. excepted.

6 Geo. 2. c. 14, s. 3 & 4. Eng.

The 4 Geo. 2. supra extended to Wales.

s. 5.

Abbreviations, and French and Latin, how far allowed.

11 Geo. 2. c. 6, Ir.

17 Geo. 2. c. 8, s. 2. Ir.

* "In the Four Courts, Dublin," in 11 Geo. 2. c. 6. Ir.

† "3 Calendar months" in the 11 Geo. 2. c. 6. Ir.

CHAP. XXII.

Of the several species of Trial.

§ 1.

Exemplifications of letters patent shall be of the same force as the letters patent themselves.

3 & 4 Edw. 6. c. 4. Eng.

13 Eliz. c. 6. Eng.

12 Eliz. c. 2. s. 1. Ir.

Records how exemplified in Ireland.

s. 2.

TO the head of *trial by record* may be referred the 3 & 4 Edw. 6. c. 4. Eng. which as explained by the 13 Eliz. c. 6. Eng. provides, that every patentee, their heirs, successors, executors and assigns, and every person having by or from them, any estate or interest in lands, &c. or other thing granted by king Henry VIII, king Edward VI, queen Mary, king Philip and queen Mary, or by the queen that now is, since the 4th day of February in the 27th year of the reign of King Henry VIII, or by the queen that now is, her heirs or successors, shall be allowed to make title by way of declaration, plaint, avowry, bar, replication, or other pleading, as well against the crown, as against all other persons, by shewing forth an exemplification or *constat*, under the great seal, of the inrolment of the same letters patent, or of so much thereof as may serve for such title, (the letters patent then remaining in force,) as if the same letters patent were pleaded and shewed forth.

And the 12 Eliz. c. 2. Ir. also provides, that all exemplifications to be made of any matter of record, being sealed under the great seal of the realm, and under the seals of the courts of K. B. C. B. and Exc. and subscribed by the lord chancellor, both the chief justices, and chief baron, shall be of the same force as the original so exemplified should be, if the same were produced, pleaded, and shewed forth. And by s. 2. in every exemplification to be made by virtue of this act shall be inserted, as a warrant for affixing the seals, these words: *In cujus rei testimonium, his literis patentibus tam magnum sigillum nostrum regni nostri Hiberniæ, quam sigilla nostra curiarum nostrarum capitalis placæ nostræ, communis banci nostri, et scaccarii nostri, in regno nostro prædicto, apponi*

apponi fecimus, juxta tenorem et effectum statuti in hac parte editi. And on sight of every exemplification sealed with any of the said seals in form aforesaid, and of the record, the officers that have the other seals may put to the same.

II. As to the *trial by certificate*; the 25 Edw. 3. st. 2. § 2. E. & I. provides, that if it be alleged against any child born beyond the sea, (who is hereby declared inheritable if the mother passed the sea by license of her husband,) that he is a bastard, in case where the bishop ought to have cognizance of bastardy, it shall be commanded to the bishop of the place where the demand is, to certify the king's court where the plea thereof hangeth, as had been used in the cases of bastardy alleged against them which were born in England. The certificates of bishops, and of the officers of the courts, are made evidence in certain other cases, by several statutes already referred to.

Trial by certificate in cases of bastardy.

25 Edw 3. st. 2. E. & I.

CHAP. XXIII.

Of the Trial by Jury.

THE statute Westm. 2. (13 Edw. 1. st. 1. c. 30. E. & I) § 1. which extended the jurisdiction of the justices of assize, and prescribed the ancient form of the writ of *venire facias*, has been already stated (*ante* p. 43.) amongst other statutes relative to the courts of assize and *nisi prius*; but the statutes which respect the modern method of trials by *nisi prius* were reserved for this place. The 42 Edw. 3. c. 11. E. & I. recites, that the panels of inquests taken before the justices, were not returned before the sessions of the justices at the *nisi prius*, so that the parties could not have knowledge of the names of the persons which should pass on such inquests; and for remedy,

Jury process altered by omitting the clause of nisi prius in the venire.

42 Edw. 3. c. 11. E. & I.

medy thereof enacts, that no inquest, but assizes and deliverance of gaols, shall be taken by writ of *nisi prius*, nor in other manner, before that the names of all that shall pass in the inquests be returned in court; and the sheriffs shall array the panels in assizes, 4 days at least before the sessions of the justices, upon pain of £20. so that the parties may have view of the panels if they demand it; and bailiffs of franchises shall make their answer to the sheriffs 6 days before the sessions, upon the same pain. And this act provides that in all panels arrayed

Who to be jurors.

13Edw. 1. st. 1.
c. 38. E. & I.

*Qualification
and description
of jurors.*

21Edw. 1. st. 1.
E. & I.

28Edw. 1. st. 3.
c. 9. E. & I.

by sheriffs or bailiffs, shall be put the most substantial people, and worthy of credit, and not suspect, which have best knowledge of the truth, and be nearest. And as to the number and qualification of jurors, it was previously provided by the 13 Edw. 1. st. 1. c. 38. E. & I. that in one assize no more should be summoned than 24; and old men above 70 years, and such as be sick at the time of the summons, or not dwelling in that country, shall not be put in juries or petty assizes; and if such assizes and juries be taken out of the shire, none shall pass in them but those that may dispend 40s. yearly at least, except such as be witnesses in writings; but this statute not to extend to the greater assizes; and if the sheriff or bailiffs offend in any point of this statute, and thereupon be convict, damages shall be awarded to the parties grieved, and they shall be nevertheless amerced to the king; and justices assigned to take assizes shall have power to hear complaints as to the articles in this statute. And the 21 Edw. 1. st. 1. E. & I. further provided, that no sheriff or bailiff should put in any recognition that should pass out of their proper bailiwicks, any except they have lands to the yearly value of 100s. at the least: but that this statute should not restrain the 13 Edw. 1. st. 1 c. 38. *supra*, so that within the county, before justices of the king assigned to the taking of inquests or other recognitions, none should be impanelled except he had lands to the yearly value of 40s.; and likewise saving that in cities, boroughs, and other market towns, it should be done as it hath been accustomed. It is also a provision of the 28 Edw. 1. st. 3. c. 9. E. & I. that no sheriff nor bailiff shall impanel in juries too many persons,

sons, nor otherwise than is ordained by the statute; and they shall put in the jury such as be next neighbours, most sufficient, and least suspected; and he that doth otherwise, and is attainted thereupon, shall pay the plaintiff his damages double, and be grievously amerced to the king. And by the 34 Edw. 3. c. 4. E. & I. panels shall be made of the next people, not suspected, nor procured; and the sheriffs, coroners, and other ministers, which do against the same, shall be punished before the justices that take the inquest, according to their trespass, as well against the king as against the party. And by the 2 Hen. 5. st. 2. c. 3. E. & I. no person shall pass in any inquest [upon trial of the death of a man, nor] betwixt party and party, in pleas, real or personal, whereof the debt or damage amounts to 40 marks, if he have not lands of the yearly value of 40s. so that it be challenged by the party: But this statute is declared by the 8 Hen. 6. c. 29. E. & I. not to extend to inquests where an alien is party. These ancient statutes so far as regarded the qualification of jurors in respect to estate, have been virtually repealed by the 4 & 5 W. & M. c. 24. s. 15. Eng. which in part also supersedes the 25 Hen. 8. c. 6 s. 3. Eng. and 27 Eliz. c. 6. s. 1. Eng. and enacts, that all jurors, other than strangers upon trials *per medietatem linguæ*, to be returned for trials of issues joined in the courts of K. B. C. B. or Exc. or before justices of assize or *nisi prius*, *oyer* and *terminer*, gaol delivery, or quarter sessions, in any county of England, shall have within the county £10 by the year of freehold, or copyhold, or ancient demesne, or in rents, in fee-simple, fee-tail, or for life; and in every county in Wales, every such juror shall have £6. by the year as aforesaid; and if any of a lesser estate be returned, it shall be a good cause of challenge, and the party returned shall be discharged upon the said challenge, or upon his own oath. Saving (s. 17.) to all cities, &c. their ancient usages. And by the 3 Geo. 2. c. 25. s. 18. Eng. any person having land in his own right of the yearly value of £20. above the reserved rent, being held by lease for the absolute term of 500 years, or for 99 years, or any other term, determinable on one or more lives, shall be inserted in the lists, and

34 Edw. 3. c. 4.
E. & I.2 Hen. 5. st. 2.
c. 3. E. & I.8 Hen. 6. c. 29.
E. & I.4 & 5 W. & M.
c. 24. s. 15. Eng.Additional qua-
lification re-
quired.

s. 17.

Cities, &c. ex-
cepted.3 Geo. 2. c. 25.
s. 18. Eng.Certain lease-
holders quali-
fied.

in

in the freeholder's book; and such leaseholders may be summoned to serve on juries as freeholders may.* The

29 Geo. 2. c. 6. s. 1. Ir.

Qualification for jurors in Ireland,

29 Geo. 2. c. 6. s. 1. Ir. in analogy to the 4 & 5 W. & M. c. 24. Eng. *supra*, enacts, that no person, other than strangers upon trials *per medietatem linguæ*, shall be qualified to serve as jurors for the trial of issues joined in the courts of Ch. K. B. C. B. or Exc. or before justices of assize or *nisi prius*, (except in counties of cities and counties of towns,) that shall not be seised of a freehold of the clear yearly value of £10; or [being a protestant] shall not be possessed of a lease for a term of years, of which 15 years shall be then unexpired; or a lease for 61 years, or more, determinable on a life or lives; on which leases respectively a clear profit rent of £15. shall accrue to the lessee; and if any person of lesser estate or value be returned upon any jury, it shall be a good cause of challenge, and the party so returned shall be discharged upon such challenge, on due proof thereof, or on oath by him made of the truth thereof.†

† Vide 10 Hen. 7 c. 7. Ir. V. 1. p. 424.

Ancient form of the writ of venire facias.

35 Hen. 8. c. 6. s. 3. Eng.

With respect to the form of the writ of *venire*: it was provided by the 35 Hen. 8. c. 6. s. 3. Eng. that in every case where such persons as shall pass upon the trial of any issue joined in the king's courts of record at Westminster, ought by law to dispend 40s. by the year of freehold, the *venire facias* shall be in this form: *Rex, &c. præcipimus, &c. quod venire fac. coram, &c. duodecim liberos et legales homines de vicineto de B. (quorum quilibet habeat quadraginta solidat. terr. tenement. vel reddit. per annum ad minus,) per quos rei veritas melius sciri poterit; et qui nec, &c.*: the residue of the said writ after the ancient form. And where it is not requisite that the persons

* By this statute (3 Geo. 2. c. 25. s. 19. Eng.) the sheriffs of London shall not return any person to try any issue joined in any of the courts of K. B. C. B. or Exc. or to serve in a jury at the sessions of *oyer and terminer*, or sessions of the peace to be held for the city, who shall not be a householder, within the city, and have lands, &c. or personal estate, to the value of £100. and the same cause alleged by way of challenge and found shall be admitted as a principal challenge; and the person challenged may be examined on oath of the truth of the matter. And by the 4 Geo. 2. c. 7. s. 3. Eng. all leaseholders upon leases where the improved rent or value shall amount to £50 *per ann.* above the ground rents or other reservations, shall be liable to serve on juries for the county of Middlesex.

shall

shall dispend 40s. by the year of freehold, the writs of *venire* shall be made after the form aforesaid, omitting this clause, *quorum quilibet, &c.* And upon every *venire* that shall have the said clause *quorum quilibet, &c.* the sheriff shall not return any person unless he may dispend 40s. by the year of freehold [*out of ancient demesne] within the county; and also shall return in every such panel 6 hundredors, if there be so many within the hundred where the venue lieth; upon pain to forfeit for every person that cannot dispend 40s. by the year—20s. and for every hundredor omitted in such return—20s.; and in every *venire* wherein the clause *quorum quilibet, &c.* shall be omitted, the sheriff shall not return any person, unless he may dispend some lands or tenements of freehold [*out of ancient demesne] within the county, and also shall return in every such panel 6 hundredors if there be so many, upon like pain. But so much of this statute as respects the returning of 6 hundredors upon each panel, is altered by the 27 Eliz. c. 6. s. 5. & 6. Eng. which provides, that upon the trial of any issue in any personal action, no challenge for the hundred shall be admitted, if 2 hundredors appear: but all other challenges, principal or for other cause, shall be admitted as if this act had never been. And for prevention of delays by reason of challenges to the arrays of panels of jurors, and to the polls, for default of hundredors, the 4 Ann. c. 16. s. 6. Eng. enacts, that every *venire facias* for the trial of any issue in any action or suit, [in any court of record at Westminster] shall be awarded of the body of the proper county. But the 24 Geo. 2. c. 18. s. 3. Eng. recites, that in this act (4 Ann. c. 16.) is contained a proviso, that the same shall not extend to any action or information upon any penal statute; and enacts, that every *venire facias* for the trial of any issue in any action or information upon any penal statute in any court of record at Westminster, in the counties palatine, and in Wales, shall be awarded of the body of the proper county. The 4 & 5 W. & M. c. 24. s. 15. Eng. enacts, that the writ of *venire facias* for impanelling juries in cases aforesaid† in England, shall be after this form: “*Rex, &c. præcipimus, &c. quod venire fac. coram, &c. duodecim liberos et legales homines de vicineto*”

* These words not in 10 Car 1. st. 2. c. 13. lr.

Hundredors to be returned.

27 Eliz. c. 6. s. 5. & 6. Eng.

Law altered as to returning hundredors.

4. Ann. c. 16. s. 6. Eng.

Venire to be awarded of the body of the county:

24 Geo. 2. c. 18. s. 3. Eng.

The like in penal actions.

4 & 5. W. & M. c. 24. s. 15. Eng.

Modern writ of venire.

† Vide s. 15, ante page. 231.

vicineto de A quorum quilibet habeat decem librat. terre tenementor. vel reddituum per annum ad minus, per quos, &c. et qui nec, &c." And the writs for returning of juries in

Wales shall be in the same manner, altering only the word *decem* for *sex*; and the sheriff shall not return any person unless he have £10. or £6. respectively by the year at least, in the county, upon pain to forfeit for every

10 Car. 1. st. 2.
c. 13. Ir.

person £5. to the crown. The 10 Car. 1. st. 2. c. 13.

Ir. has followed the 35 Hen. 8. c. 6. s. 3. Eng. *supra*, with such deviation as is noted in the margin; and with this further exception, that the 10 Car. 1. required only 2 hundredors to be returned upon every *venire facias*, if there were so many within the barony or hundred where the *venire* lies. The 6 Ann. c. 10. s. 6. Ir. has in like manner as the 4 Ann. c. 16. Eng. directed the

6 Ann. c. 10.
s. 6. Ir.

2 Hundredors to
be returned in
actions upon pe-
nal statutes in
Ireland.

venire for trial of issues in K. B. C. B. or Exc. at

Dublin, to be awarded to the body of the county: but the exception of actions, &c. upon penal statutes, which

is contained in the 6 Ann. c. 10. Ir. (as well as in the 4 Ann. c. 16. Eng.) has not been done away, in respect

to such challenges for default of hundredors, by any statute in Ireland similar to the 24 Geo. 2. c. 18. Eng. *su-*

29 Geo. 2. c. 6.
s. 1. Ir.

pra. And the 29 Geo. 2. c. 6. s. 1. Ir. prescribes the

following form of the writ of *venire facias* in Ireland, corresponding to that of the 4 & 5 W. & M. *supra*: "King,

"and so forth. We command, and so forth, that you

"cause to come before, and so forth, 12 free and lawful

"men of your county, every of which have £10. a year

"at least, in lands, tenements, or rents, by whom, and

"so forth, and who are in no ways, and so forth," and the

residue of the said writ shall be after the usual manner.

The dwelling
place, &c. of ju-
rors, shall be
returned.

27 Eliz. c. 7.
s. 2. Eng.

By the 27 Eliz. c. 7. s. 2. Eng. no sheriff, or other

person, shall return any juror dwelling out of any liber-

ty, without the addition of the place of his abode at the

time of the return, or within one year next before, or

some other addition by which the party may be known; nor

any juror within any liberty, with other addition than

such as shall be delivered to him by the bailiff of the li-

berty; nor any bailiff of liberty shall return any juror, or

deliver to the sheriff the names of any persons to be re-

turned, without the addition of the place of abode, &c.

and

and no extract of issues against any juror shall be delivered out without such addition as is put in the original panel, or *tales*, wherein such juror shall be returned; and no under-sheriff, bailiff, or other person, shall levy any issues of any other persons than of such as by the said estreat are of right charged with the said issues; upon pain that every clerk that shall write or deliver any such estreat, and every other person offending contrary to this act, shall forfeit to the crown 5 marks; and to the party grieved, 5 marks; to be recovered by action of debt, &c. in any court of record. And by s. 3. justices of *oyer and terminer*, justices of assize, and justices of peace, as well within liberties as without, shall have power to hear and determine the offences aforesaid. And the 7 Hen. 6. Ir. is in some measure analogous, which provides, that in inquests to be taken between the king and the party, and lords of franchises and the party, or between party and party, in the courts of the king, or of any lord of franchise, the additions of their estate, or of their mystery, or of their places, be put in the panels of said inquests: And if the sheriffs or other ministers which have return of writs or warrants do the contrary, they shall be amerced, and their amercements assessed by the judges before whom such writs, &c. are returned.

Penalty.

s. 3.

Penalty how adjudged.

7 Hen. 6. Ir.

Additions of jurors to be returned in Ireland.

By the 35 Hen. 8. c. 6. s. 3. Eng. (as amended by the 27 Eliz. c. 6. s. 2. Eng.) upon every writ of *habeas corpora* or *distringas* with a *nisi prius* delivered of record, the sheriffs shall return in issues upon every person impanelled at least 10s. and at the 2d *habeas corpora*—20s. and at the 3d writ—30s. and upon every writ further to double the issues until a full jury be sworn; on pain to forfeit £5. But by s. 11. upon a reasonable excuse for the default of any juror, proved before the justices of assize or *nisi prius*, at the day of their appearance, by the oaths of 2 witnesses, the justices shall have authority to discharge such jurors of such forfeiture of issues; and the sheriff shall be therein discharged of the issues. And by s. 12. if the assize or *nisi prius* be discontinued for not coming of the justices, or any other occasion, other than by default of jurors, the jurors shall be discharged of any issues, and the sheriff shall be likewise discharged

What issues shall be returned upon jurors.

35 Hen. 8. c. 6.

s. 3. Eng.

(27 Eliz. c. 6. s. 2. Eng.)

35 Hen. 8. c. 6. s. 11. Eng.

Forfeiture how discharged.

s. 12.

of

- of the penalties for the not returning of such issues. By s. 13. if upon any such *habeas corpora* or *distringas* with a *nisi prius*, issues be returned upon any hundredors or jurors where they shall not be lawfully summoned, the sheriff or minister shall lose double so much as the issues returned upon such hundredors or jurors shall amount unto; the moiety of all which forfeitures (other than the issues to be returned upon the jurors) shall be to the king, and the other half to him that will sue for the same by action of debt, &c. in any court of record; saving to all persons, &c. all such right as they should have to such issues. But by s. 14. this act shall not extend to any city or town corporate, nor to any sheriff or minister in the same, but they may return such persons as they have been accustomed to do, so that they return like issues as are mentioned in this act. And the 27 Eliz. c. 6. s. 3. Eng. also provides, that if any sheriff, &c. return any person in any jury, wherein he shall for default of appearance lose any issues, where in truth such person shall not be summoned, such sheriff, &c. shall forfeit to the person so returned double the value of issues lost. And this act (s. 7.) also excepts juries or issues to be returned in any city or town corporate, or other place privileged to hold plea, or in the 12 shires of Wales.
- By the 4 & 5 W. & M. c. 24. s. 15. Eng. no juryman's issues shall be saved, but by order of the court before whom the issue is to be tried, for some reasonable cause proved upon oath; and such issues shall be estreated. And by s. 16. no sheriff, &c. shall return any person to have been summoned, unless he be summoned 6 days before the day for appearance, [nor shall take any reward to excuse any juror,] upon pain to forfeit £10. to the king. And by s. 21. no writ *de non ponendis in assisis et juratis* shall be granted, unless upon oath that the suggestions upon which the writ is granted are true. The 10 Car. 1. st. 2. c. 13. s. 2. Ir. has followed the 35 Hen. 8. c. 6. s. 4. Eng. in providing, that upon every 1st writ of *habeas corpora* or *distringas* with a *nisi prius* delivered of record, the sheriff shall return in issues upon every person impanelled at least 5s. and at the 2d *habeas corpora* 10s. and at the 3d writ 13s. 4d. and
- s. 13. *Penalty for re-
turning issues
upon jurors not
lawfully sum-
moned.*
- s. 14. *Exception of
cities, &c.*
- 27 Eliz. c. 6.
s. 3. Eng.
- s. 7.
- 4 & 5 W. & M.
c. 24. s. 15.
Eng.
*Issues to be es-
treated.*
- s. 16.
- Penalty for re-
turning jurors
not duly sum-
moned.*
- s. 21. *Writ de non po-
nend. how issu-
ed.*
- 10 Car. 1. st. 2.
c. 13. s. 2. Ir.
- What issues re-
turned upon ju-
rors in Ireland.*

and upon every writ further to double the issues until a full jury be sworn, on pain to forfeit £5. The 10 Car. 1. st. 2. c. 13. Ir. also contains clauses (s. 6. 7. & 8.) corresponding to those of the 35 Hen. 8. c. 6. s. 11. 12. 13. & 14. *supra*.

By the 7 & 8 W. 3. c. 32. s. 4. Eng. all constables, Constables, &c. when and where to return lists of persons fit to serve on juries. titling-men, and head-boroughs, shall yearly, at the general quarter sessions, in the week after the feast of St. Michael, upon the first day of the sessions, or upon the first day that the sessions shall be held by adjournment, return a list of the names and places of abode of all persons within the places for which they serve, qualified to serve upon such juries, with their additions, between the age of 21 years and 70 years, to the justices of the peace; which justices, or 2 of them, at the said sessions, shall cause to be delivered a duplicate of the list by the clerks of the peace to the sheriffs, on or before the 1st of January, and cause the lists to be entered Duplicates to be delivered to sheriffs. by the clerks of the peace amongst the records of the sessions; and no sheriff shall impanel any persons to try issues joined in the said courts, or to serve in any jury at the assizes, sessions of *oyer and terminer*, gaol delivery, or sessions of the peace, that shall not be named in the list; and any constable, &c. failing to make the return aforesaid, shall forfeit £5. to the king; to be recovered by bill, plaint, or information. By s. 5. every summons of any person qualified to the aforesaid services shall be made by the sheriff, his officer or deputy, 6 days before at least, shewing to every person so summoned the warrant under the seal of the office; and in case any juror be absent from his habitation, notice of such summons shall be given, by leaving a note in writing, under the hand of such officer, at the dwelling house of such juror, with some person there inhabiting. Jurors here summoned. By s. 6. the said return to the justices shall be a good excuse for the sheriff for such summons and returns. Return to the justices a good excuse for the sheriff. And if any action or information shall be brought against any sheriff for such return, the sheriff may plead the general issue; and if the plaintiff be nonsuited or discontinue, or a *noli prosequi* be entered in any information, or a verdict be given for the defendant, the plaintiff or informer shall pay treble costs.

Penalty for
sheriffs' neglect
or undue return.

s. 11.

Time for sum-
moning juries, or
returning writs,
not hereby al-
tered.

s. 9.

Inhabitants of
Westminster ex-
empt from serv-
ing for county
Middlesex.

s. 12.

This act not to
extend to Lon-
don, &c.

3 & 4 Ann. c. 18.
s. 5. Eng.

Justices to issue
warrants to con-
stables for re-
turning lists of
persons fit for
jurors.

costs. And if the sheriff, his deputy or bailiffs, shall summon any freeholder or copyholder otherwise than as aforesaid, or neglect their duty in the services required by this act, or excuse any person for favour or reward, or allow of any writ of *non ponendis in assisis et juratis*, or other writ, to excuse any person from the service of any jury, under the age of 70 years: such sheriff, &c. shall forfeit £20.* to be recovered by such party grieved, or whom else shall sue for the same, in any of the courts at Westminster, by action of debt, &c. But by s. 11. this act or the 4 & 5 W. & M. c. 24. Eng. shall not give any longer time for the summoning of juries, to try any issues that are triable by jurors of London or Middlesex, than was required before; nor shall give any longer time for the return of any writ, precept, or process of *venire facias*, *habeas corpora*, or *distringas*; but where there shall not be 6 days between the awarding of such writ and return thereof, every juror may be summoned, attached, or distrained, as he might have been before the said act. By s. 9. the inhabitants of the city of Westminster shall be exempted from serving in any jury at the sessions of the peace for Middlesex. And by s. 12. this act shall not extend to the city of London, nor to any county of any city or town, nor to any town corporate, that have power by charter to hold sessions of gaol delivery, or sessions of the peace.† And the 3 & 4 Ann. c. 18. s. 5. Eng. (which supersedes the 8 & 9 W. 3. c. 10. Eng.) further provides, that the justices of peace for all counties within England or Wales, shall yearly at the quarter sessions next after the 24th of June, issue their warrants to the head-constables of every hundred, lathe, or wapentake, requiring them to issue their precepts to the constables, tithing-men and head-boroughs, requiring them to meet together with the head-constables, within 14 days next after, at some usual place; where the constables, &c. shall prepare a list signed by them, of the

* The penalty by the 27 Eliz. c. 6. s. 4. Eng. for corruptly excusing any person from serving as a juror, was but £5. one moiety to the crown and the other to the informer: and but £10. to the king by the 4 & 5 W & M. c. 24. s. 15. Eng.

† This act (s. 7. & 8.) and the 1 Ann. st. 2. c. 13. 3. & 4 Ann. c. 18. and 10 Ann. c. 14. contain several special provisions in respect to the county of York.

names and places of abode of all the persons within the place for which they serve, qualified to serve on juries, according to the 4 & 5 W. & M. c. 24. with their additions, between the age of 21 years and 70 years as by the 7 & 8 W. 3. c. 32 is directed: which list, the constable, &c. yearly at the quarter sessions in the week after the feast of St. Michael, upon the first day of the sessions, or upon the first day that the sessions shall be held by adjournment, shall return to the justices. And any head-constable failing to issue his precept to meet with the constables, &c. shall forfeit £10. and any constable, &c. failing to meet the head-constable, and failing to prepare a list, and to return the same to the justices as aforesaid, shall forfeit £5. And every such high constable, constable, and tithingman, so offending shall be prosecuted at the assizes, sessions of *oyer and terminer*, or general gaol delivery, or sessions of the peace. And by s. 6. the justices of peace at the quarter sessions after the 24th of June yearly, shall cause the said several acts to be read in court. For the better impanelling of able men and sufficient freeholders on juries in Ireland; the 12 Geo. 1. c. 4. s. 16. Ir. provides, that the sheriffs of each county shall at their Michaelmas grand turn yearly, in every barony, diligently inquire by the oath of 12 or more honest men, (which oath such sheriffs, or their sub-sheriffs are to administer) and make a true return of all the freeholders having freehold lands or tenements of the yearly value of 40s. *per ann.* of each barony; with their names, surnames, and additions; and shall return the same on oath at every January quarter sessions to the justices of peace there sitting, to be deposited in the hands of the clerk of the peace, or his deputy; and the clerk of the peace, &c. shall deliver a true copy thereof signed by him into each of the Four Courts at Dublin: and in case any sheriff, sub-sheriff, or clerk of the peace, or his deputy, shall refuse or neglect to do his duty therein, such sheriff, &c. shall forfeit £5. to be recovered in a summary way before the judges of that court to which such return ought to have been made.

Penalty for default of constables.

s. 6.

12 Geo. 1. c. 4. s. 16. Ir.

Grand panel of freeholders to be returned by the sheriff to the justices at January sessions.

And transmitte to each of the Four Courts

Penalty.

Lists of jurors to be yearly fixed on church doors.

3 Geo. 2. c. 25. s. 1. Eng.

Persons not qualified may be relieved at quarter-sessions.

s. 2.

Penalty for wilfully omitting or inserting wrong persons.

Duplicates of lists transmitted to the sheriff.

By the 3 Geo. 2 c. 25. s. 1. Eng.* the persons required by the 7 & 8 W. 3. c. 32. and by the clause of the 3 & 4 Ann. c. 18. *ante*, to give in, or who are by this act to make up lists of the names of persons qualified to serve on juries, shall, on request of any parish officer, who shall have in his custody any of the rates for the poor or land-tax, have liberty to inspect such rates, and take the names of such persons qualified, dwelling within their precincts; and shall yearly, 20 days at least before Michaelmas, upon 2 Sundays, fix upon the door of the church, &c. within their precincts, a list of all such persons intended to be returned to the quarter-sessions, and leave a duplicate of such list with a church-warden or overseer of the poor; and if any person not qualified shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him, the justices at their quarter-sessions, upon satisfaction from the oath of the party complaining, or other proof, shall order his name to be struck out. And by s. 2 if any person required to give in or make up any such list, shall wilfully omit any person whose name ought to be inserted, or insert any who ought to be omitted, or shall take any reward for omitting or inserting any person, he shall, for every person so omitted or inserted, forfeit 20s. on conviction before one justice of the county, &c. where the offender shall dwell, on the confession of the offender, or proof by one witness on oath; one half to the informer, the other half to the poor of the parish, &c. for which the list is returned; and if the penalty shall not be paid within 5 days, it shall be levied by distress and sale of goods, by warrant from one justice. And the justices before whom such person shall be convicted, shall certify the same to the next quarter-sessions, which shall direct the clerk of the peace to insert or strike out the name; and duplicates of the lists, when delivered at the sessions and entered by the clerk of the peace, shall, during the sessions, or within 10 days after, be transmitted by the clerk of the peace to the sheriff; and the sheriff shall

* By s. 21. this act shall be read once every year, at the quarter sessions to be held for every county, &c. within England and Wales, next after the 24th of June.

take care that the names be entered alphabetically, with their additions and places of abode. And every clerk of the peace neglecting his duty therein shall forfeit £20. to such person as shall prosecute for the same, till the party be convicted upon an indictment at the quarter-sessions. By s. 3. if any sheriff, or other officer to whom the return of juries shall belong, shall summon and return any person to serve on any jury before the justices of assize, *nisi prius*, or judges of the great sessions in Wales, or of the sessions for the counties palatine, whose name is not inserted in the duplicates transmitted to him by the clerk of the peace; or if any clerk of assize, judge's associate, or other officer, shall record the appearance of any person so summoned and returned, who did not really appear, then any judge of assize, *nisi prius*, &c. shall, upon examination in a summary way, set such fines upon such sheriff, &c. for every person so summoned and returned, and for every person whose appearance shall be so falsely recorded, as the said judge shall think meet, not exceeding £10. nor less than 40s. By s. 4. no persons shall be returned as jurors at any assizes or *nisi prius*, or in the said courts of great sessions, or sessions for the counties palatine, who have served within 1 year before in the county of Rutland, or 4 years in the county of York, or within 2 years in any other county, not being a county of a city or town; and if any sheriff shall wilfully transgress therein, any judge of assize, &c. is required, on examination and proof of such offence, in a summary way, to set a fine upon such offender, not exceeding £5.* By s. 5. every sheriff, &c. shall register in a book the names, &c. of such persons as shall be summoned and serve as jurors at any assizes, &c. alphabetically, and the times of their services: and every person so summoned and serving,

s. 3.

*Penalty for re-
turning any not
in duplicates.*

*Penalty for
falsely recording
appearances.*

s. 4.

*Justices of as-
size, &c. may
fine sheriff for
returning jurors
irregularly.*

s. 5.

*Sheriffs, &c. to
enter the names
of those who have
served; and
give certificates.*

* By the 4 Geo. 2. c. 7. s. 1. & 2. Eng. this clause of the 3 Geo. 2. c. 25. s. 4. Eng. shall not extend to the county of Middlesex: and no person shall be returned to serve as a juror at *nisi prius* in Middlesex, who has been returned at *nisi prius* in the said county, in the 2 terms or vacations next preceding, under such penalty upon the sheriff, &c. as might have been inflicted for any offence against the said clause

No money to be taken to excuse persons from serving.

s. 6.

s. 7.

Constables, &c. to subscribe their lists before justices upon oath.

s. 8.

Sheriff, &c. on return of venire to annex a panel of jurors, &c.

† These words not in 29 Geo. 2. c. 6. s. 2. Ir. but see first note in next page.

§ "Than 36 nor more than 60" by 29 Geo. 2. c. 6. Ir.

shall, upon application to the sheriff, &c. have a certificate testifying his attendance, &c. which the sheriff, &c. is to give without fee; and the book shall be transmitted by the sheriff, &c. to his successor. By s. 6. no sheriff or other person shall take any reward to excuse any person from serving on juries; and no officer appointed to summon juries, shall summon any person other than such whose name is specified in a mandate signed by the sheriff, &c.* And if any sheriff or officer shall wilfully transgress in the said cases, any judge of assize, &c. may, on examination and proof of such offence, in a summary way, set a fine on any person so offending, not exceeding [†£10] By s. 7. it shall be sufficient for any constables, tithingmen, or headboroughs, after they have completed the lists for their precincts, according to the 7 & 8 W. 3. c. 32. and 3 & 4 Ann. c. 18. and this act, to subscribe the same in the presence of one justice for each county, &c. and at the same time to attest the truth of such lists upon oath, to the best of their knowledge or belief; and the lists shall (being signed by the justices) be delivered by the constables, &c. to the high constables, who are to deliver in such lists to the justices at their quarter-sessions, in open court, attesting upon oath the receipt of such lists from the constables, &c. and that no alteration hath been made since their receipt thereof. By s. 8. every sheriff, &c. in England, shall, upon the return of every *venire facias*, (unless in causes intended to be tried at bar, or where a special jury shall be struck by rule of court,) annex a panel to the writ, containing the names, additions, and places of abode, of a competent number of jurors named in such lists, [†the names of the same persons to be inserted in the panel annexed to every *venire facias* for the trial of issues at the same assizes;] which number of jurors shall not be less [§than 48, nor more than 72,] without direction of the judges appointed to go the circuit, or one of them,

* "But shall summon every person named in each mandate 6 days before the time appointed for the jury to appear," here added in the 29 Geo. 2. c. 6. s. 2. Ir.

† "£40 nor less than £20 to be estreated into the exchequer" by 29 Geo. 2. c. 6. s. 2. Ir.

by

by order under their hands*; and the writs of *habeas corpora* or *distringas*, subsequent to such *venire*, need not have inserted in the bodies of such writs the names of the persons contained in such panel; but it shall be sufficient to insert in such writs †*corpora separatum personarum in panello huic brevi annexo nominatarum*, or words of like import, and to annex to such writs panels containing the names returned in the panel to the *venire*; and for making the said returns and panels, and annexing the same, no other fees shall be taken than what are now allowed; and the persons named in such panels shall be summoned to serve on juries at the then next assizes or sessions of *nisi prius*, and no other.

By s. 9. every sheriff or officer, to whom the return of juries in the court of grand sessions in any county in Wales shall belong, shall, at least 8 days before every grand sessions, summon a competent number of persons qualified out of every hundred and commote within such county, so as such number be not less than 10, or more than 15, without the direction of the judge of the grand session by rule of court: and the officer shall return a list containing the names, &c. of the persons so summoned, the first court of the second day of every grand sessions; and the persons so summoned, or a competent number of them, as the judges shall direct, and no other, shall be named in every panel to be annexed to every *venire*, *habeas corpora* and *distringas*, for the trial of causes in such grand sessions. And by s. 10. every sheriff or officer to whom the return of the *venire* for the trial of causes before the justices of the sessions for the counties palatine doth belong, shall, 14 days at least before the sessions, summon a competent number of persons qualified, so as such number be not less than 48, nor more than 72, without the direction of the judges;

s. 9.

*Return of jurors
in Wales.*

s. 10.

*And in counties
palatine.*

* “And such jury so returned shall try all the issues at that assizes” here added by the 29 Geo. 2. c. 6. Ir.

† “The bodies of the several persons named in a panel to this writ annexed” in 29 Geo. 2. c. 6. Ir.

and

and shall 8 days at least before such sessions, make a list of the persons so summoned, containing their names, &c.; and such lists shall be hung up in the sheriff's office; and the persons named in such lists, and no others, shall be summoned to serve on juries at the next sessions; and the sheriff is to return such list on the first day of the sessions; and the persons so summoned, or a competent number of them, as the judges shall direct, and no other, shall be named in every panel to be annexed to every *venire*, *habeas corpora* and *distringas*, in such sessions.

29 Geo. 2. c. 6. Ir. has followed the 3 Geo. 2. c. 25. Ir.

s. 6 & 8. Eng. with such deviations as are noted in the margin: but the other 8 sections, *supra*, have not been adopted by this or any other Irish statute.

40 Geo. 3. c. 72. s. 1. Ir. in analogy to the 4 Geo. 2. c. 7. s. 1. (*ante* page 243.) provides, that no person

Dublin jurors not to be summoned in more than one court, in same term or sittings after it.

shall be summoned and returned to serve on any jury, in more than one of the courts of K. B. C. B. or Exc. during the same term, or the respective sittings after term of said courts. And it shall be lawful for any judges or judge who shall preside in any of said courts, to which said person is so summoned, &c. to serve as a juror, to examine in a summary manner into the fact of such second summons or return, and upon proof thereof such judge shall fine the sheriffs, (of the county of the city of Dublin) sub-sheriff, coroner, or other person to whom the summoning and returning belongs, in a sum not exceeding £10. nor less than 40s. And by

Penalty.

s. 2.

Person serving not to be summoned for 2 terms after.

s. 2. no sheriff, &c. shall summon, &c. any person who has served as a juror in the court of K. B. C. B. or Exc. or their sittings after term, for the space of 2 terms after such service; and if any such sheriff, &c. shall offend therein, the judges or judge before whom said juror is so summoned, &c. shall fine such sheriffs, &c. in any sum not exceeding £10 nor less than £5. Provided that nothing in this act shall extend to prevent persons when struck, to serve on special juries, notwithstanding they shall have served during the time limited.

Penalty.

Exception of special juries.

s. 3.

Sheriffs, &c. to keep registries of persons who serve as jurors.

By s. 3. the sheriffs, &c. shall enter in a book the names of the persons who shall be summoned and returned as jurors

jurors on trials in the courts of K. B. C. B. or Exc. and the sittings after term, with their additions and places of abode alphabetically arranged. And by s. 4. every person who has been summoned or served, may demand a certificate from the sheriff, &c. of such his attendance, which certificate the sheriff, &c. shall give without fee. And by s. 5. upon neglect of the said sheriff, &c. to hand over such book to their successors, upon summary examination and proof made to the court of K. B. the court shall fine the party so offending in any sum not exceeding £500. nor less than £50; and if said sheriff, &c. shall refuse to give any person a certificate of his service as a juror, upon summary examination, and proof made to the court in which such person so served, said court shall fine the said sheriff, &c. in any sum not more than £20. nor less than £5. to be paid in open court to the party aggrieved.

s. 4.

And to give certificates.

s. 5.

Penalties for not handing over such books of registry to successors, or not giving certificates.

By the 3 Geo. 2. c. 25. s. 11. Eng. the name of each person summoned and impanelled, with his addition and place of abode, shall be written in distinct pieces of parchment or paper of equal size, and shall be delivered to the [*marshal] of the judge, &c. by the [†under-sheriff, or some agent of his,] and shall, by the direction of the [*marshal,] be rolled up all in the same manner, and put into a box or glass; and when a cause is brought on to be tried, some indifferent person in open court shall draw out 12 of the papers, &c; and if any of the persons drawn shall not appear, or be challenged and set aside, then a further number, till 12 be drawn who shall appear, and be allowed; and the said 12 persons so first approved, their names being marked in the panel, and they being sworn, shall be the jury to try the cause; and the names of the persons sworn shall be kept apart in some other box, &c. till the jury have given in their verdict, and the same is recorded, or till the jury be discharged; and then the same names, &c. shall be rolled up again, and returned to the former box, &c. and so *toties quoties*. And by s. 12. if a cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict, or be discharged, the court may order 12

Jury how selected from panel.

3 Geo. 2. c. 25. s. 11. Eng.

* "Clerk" in 29 Geo. 2. c. 6. Ir.

† "Sheriff or under-sheriff or other officer returning the process" in 29 Geo. 2. c. 6. Ir.

s. 12.

Successive juries how drawn.

of

s. 13.

Penalty on defaulters.

of the residue to be drawn as before for trial of the cause. And by s. 13. every person whose name shall be drawn, and who shall not appear being called 3 times, on oath made that such person had been summoned, shall forfeit for every default (unless some reasonable cause of absence be proved by oath or affidavit, to the satisfaction of the judge) such fine, not exceeding [*£5 nor less than 40s.] as the judge shall think reasonable.

29 Geo. 2. c. 6.
s. 4. 5 & 6. Ir.
s. 8.

*Coroner, &c.
to proceed in like
manner as sheriff.*

The 29 Geo. 2. c. 6. Ir. contains similar clauses: and further provides (s. 8.) that whensoever a jury for the trial of any issue by *nisi prius* shall not be returned by the sheriff, but by the coroner or other officer legally appointed, such coroner, &c. shall return the same number of jurors, and under the same qualifications, as the sheriff is bound to do; and the jurors so returned shall be balloted for in the same manner.

*Association of
witnesses to
deeds, with jury,
dispensed with;
where they do
not appear upon
process.*

12 Edw. 2. st. 1.
c. 2. E. & I.

The witnesses to deeds were anciently associated and joined in the verdict of the jury; but the 12 Edw. 2. st. 1. c. 2. E. & I. provides, that when a deed is denied in the king's court, wherein witnesses be named, process shall be awarded to cause such witnesses to appear, so that if none of them come in at the great distress returned, or if it be returned that they have nothing, or that they cannot be found, yet the taking of the inquest shall not be deferred; and if the witnesses come in at the great distress, and the inquest for some cause remaineth untaken, the witnesses shall have like day given them, as is assigned for the taking of the inquest; at which day, if the witnesses do not appear, the issues that were first returned upon them shall be forfeit, and the taking of the inquest shall not be deferred because of their absence. And for absence of witnesses dwelling within franchises where the king's writ original doth not run, the taking of an inquest shall not be deferred. And by the 9 Edw. 3. st. 1. c. 4. E. & I. when any deeds be put forth in bar of any action, bearing date in a place within franchise, although there be witnesses of the franchises named in the deeds, if the deeds be denied, process shall be made into the county

9 Edw. 3. st. 1.
c. 4. E. & I.

*Process against
such witnesses
when residing
within franchises.*

* "Not exceeding £20. nor less than 40s. which the judges are required to estreat," by 29 Geo. 2. c. 6. Ir.

where

where the plea shall be moved, to have the inquest of the county and the witnesses; and if the witnesses come not at the great distress returned, the justices shall proceed to the taking of the inquest, as if the deed did bear date in the shire where the plea was moved, and the witnesses were of the same county.

The 4 Ann. c. 16. s. 8. Eng. provides, that in any actions in any court of record at [*Westminster,] where it shall appear to the court that it will be necessary that the jurors should have the view of the place in question, the courts may order special writs of *distringas* or *habeas corpora*, by which the sheriff or other officer shall be commanded to have 6 out of the first 12 of the jurors, or some greater number, at the place in question, some convenient time before the trial, who shall have the matters in question shewn to them by 2 persons in the writ named, to be appointed by the court; and the sheriff or other officer shall by a special return certify that the view hath been had accordingly: Which clause is also contained in the 6 Ann. c. 10. Ir. And by the 3 Geo. 2. c. 25. s. 14. Eng. and 29 Geo. 2. c. 6. s. 7. Ir. where a view shall be allowed, 6 of the jurors or more (who shall be consented to by the parties or their agents on both sides, or if they cannot agree shall be named by the proper officer of the court [† of K. B. C. B. Exc. at Westminster, or the grand session in Wales, and the counties palatine,] or, if need be, by a judge, or by the judge before whom the cause shall be brought on to trial,) shall have the view, and shall be first sworn, or such of them as appear on the jury before any drawing; and so many only shall be drawn to be added to the viewers as shall make up the number of 12.

The awarding a *tales de circumstantibus* to supply a deficiency of jurors, is by virtue of the 35 Hen. 8. c. 6. s. 6. Eng, which provides, that in every *habeas corpora* or *distringas* with a *nisi prius*, where the jury is like to remain untaken for default of jurors, the justices upon request made by the plaintiff or defendant,‡ shall have

Viewers how appointed.

4 Ann. c. 16. s. 8. Eng.

* "Dublin" in 6 Ann c. 10. s. 8. Ir.

3 Geo. 2. c. 25. s. 14. Eng.

29 Geo. 2. c. 6. s. 7. Ir.

Method of swearing jury in case of view.

† "K. B. C. B. or Exc. at Dublin" in 29 Geo. 2. c. 6. s. 7. Ir.

Tales awarded and returned.

35 Hen. 8. c. 6. s. 6. Eng.

‡ "Or by him that maketh conusance or avowry in a replevin, or by the tenant or defendant in all actions," here added by the 10 Car. 1. st. 2. c. 13. Ir.

s. 7.
Challenges may
be to the tales.

s. 9.

Tales may be
fined if they
withdraw, &c.

s. 10.

Jurors shall lose
issues though
jury thus made
full.

4 & 5 Ph. & M.
c. 7. s. 2. Eng.

A tales grant-
able to the king
or plaintiffs
in actions on
penal statutes.

s. 3.

14 Eliz. c. 9.
s. 1. Eng.

Tales grantable
at the tenant's or
defendant's suit.

authority to command* the sheriff, &c. to name so many other able persons of the county then present, as shall make up a full jury, which persons shall be added to the former panel. And by s. 7. the parties shall have their challenge to the jurors so added, as if they had been impanelled upon the *venire*. By s. 9. in case such persons as the sheriff shall name as aforesaid be present and do not appear, or do wilfully withdraw themselves, the justices shall set such fine upon such juror as they shall think good, to be levied as issues lost by jurors. And by s. 10. where any jury shall be made full by the command of the justices, such persons as were returned in the panel that shall make default, shall lose issues as though the jury had remained for default of jurors.† By the 4 & 5 Ph. & M. c. 7. s. 2. Eng. justices of assize and *nisi prius*, before whom any trial shall be made by virtue of any writ of *habeas corpora* or *distringas* with a *nisi prius*, (where the jury is like to remain for default of jurors) shall have authority, upon request made for the king, or by the party that followeth as well for the king as for himself upon any penal statute, or his attorney, to command the sheriff to name so many able persons of the county then present, and to add the names to the former panel as shall make a full jury. And by s. 3. every clause in the 35 Hen. 8. c. 6. *supra*, shall be taken to give the same advantage to the king, and all such persons as shall pursue any action, &c. for the king and the party, as the plaintiff in any other action might have. By the 14 Eliz. c. 9. s. 1. Eng. where the plaintiff or demandant may have upon his request to the justices of *nisi prius* in England, or to the justices of *oyer* or of assizes of the 12 shires of Wales, and the counties palatine, a *tales de circumstantibus*, in all such cases the tenants, actors, avowants, and defendants, (if the plaintiffs or

* “As well where the king is a party, or where the same shall be prosecuted by any informer as well for the king as himself, as in all other actions,” here added by 10 Car. 1. st. 2. c. 13. Ir.

† The 5 Eliz. c. 5. Eng. extends these and the other provisions of this statute, (*ante* p. 237—8.) to the 12 counties in Wales, and to the counties palatine.

demandants

demandants shall forbear to pray the same) may, upon their request, have by the same justices the *tales* unto them granted, in like manner as the plaintiff or demandant may. And by s. 2. in all popular actions in the queen's courts of record upon penal laws, wherein any person shall sue as well for the queen as himself, the defendants shall be admitted to pray a *tales de circumstantibus*. By the 4 & 5 W. & M. c. 24. s. 18. Eng. it shall be lawful to return any person upon the *tales* in England who shall have within the county £5. by the year, and not otherwise. And by s. 19. it shall be lawful to return any person upon the *tales* in Wales, who shall have within the county £3. by the year. By s. 20. no fee shall be taken by any sheriff, clerk of assizes, or other person, upon account of any *tales* returned; upon pain of £10. one moiety to the prosecutor and the other moiety to the crown, to be recovered by action of debt, &c. By the 7 & 8 W. 3. c. 32. s. 3. Eng. in every writ of *habeas corpora* or *distringas* with a *nisi prius*, where a full jury shall not appear, or where the jury is like to remain untaken for default of jurors, the sheriff shall, upon awarding the *tales*, return freeholders or copyholders of the county who shall be returned upon some other panel to serve at the same assizes, and not others, if so many of the other panels be present: and either of the parties shall have his challenge; and in case any such freeholder or copyholder, as the sheriff shall return upon the *tales*, being present, shall be called and not appear, or shall wilfully withdraw himself, the judge of assize shall set a fine upon such person. The 10 Car. 1. st. 2. c. 13. s. 3 & 4. Ir. has followed the 35 Hen. 8. c. 6. s. 6. 7. 9. & 10. Eng. with such deviations as are noted in the margin, and has thus incorporated the amendments of the 4 & 5 Ph. & M. c. 7. and 14 Eliz. c. 9. *supra*: but the provisions of the 4 & 5 W. & M. and 7 & 8 W. 3. *supra*, have not been adopted in Ireland. The 29 Geo. 2. c. 6. s. 9. Ir. provides that a *tales* may be granted and returned as heretofore.

With respect to striking special juries: the 3 Geo. 2. c. 25. s. 15. Eng. declares and enacts, that it shall be lawful for the courts of K. B. C. B. and Exc. [at Westminster]

s. 2.

The defendant in popular actions may have a *tales*.

4 & 5 W. & M. c. 24. s. 18. Eng.

Qualification for *tales*.

s. 19.

Tales in Wales.

s. 20.

Penalty for taking fee for returning *tales*.

7 & 8 W. 3. c. 32. s. 3. Eng.

Tales how returned by sheriff.

10 Car. 1. st. 2. c. 13. s. 3 & 4. Ir.

29 Geo. 2. c. 6. s. 9. Ir.

Tales as usual. Special juries how struck.

3 Geo. 2. c. 25. s. 15. Eng.

*"Dublin" in
17 & 18 Geo. 3.
c. 45. Ir.

†"By counsel"
added in the
17 & 18 Geo. 3.
c. 45. Ir.

s. 16.

Fees by whom
paid.

s. 17.

How struck in
cities.

§"Grand pa-
nel" in 17 & 18
Geo. 3. c. 45. Ir.

6 Geo. 2. c. 37.
s. 2. Eng.

Counties pala-
tine.

24 Geo. 2. c. 18.
s. 1. Eng.

Persons apply-
ing for special
juries to pay all
expenses attend-
ing the same.

Unless judge
certifies, &c.

s. 2.

Fees allowed to
special jurors.

17 & 18 Geo. 3.
c. 45. s. 3. 5. &
6. Ir.

*Westminster] [†upon motion made in behalf of his majesty, or on the motion of any prosecutor or defendant, in an indictment or information for any misdemeanor or information in the nature of a *quo warranto* in the K. B. or in an information in Exc.] or on motion‡ of any plaintiff or defendant in any cause in the said courts, of K. B. C. B. or Exc. and they are hereby required to order a jury to be struck, before the proper officer, for the trial of any issue, in such manner as special juries are usually struck in such courts upon trials at bar. And by s. 16. the person who shall apply for such jury shall pay the fees for striking it, and shall have no allowance for the same in taxation of costs. By s. 17. where a special jury shall be ordered by rule of court in any cause arising in any county of a city or town, the sheriff shall be ordered by such rule to bring the books or lists of persons qualified to serve on juries within the same, in like manner as the [§freeholder's book] hath been usually ordered to be brought in order to the striking of juries for trials at bar; and the juries shall be struck out of such books, &c. And these provisions are extended to the counties palatine by the 6 Geo. 2. c. 37. s. 2. Eng. And the 24 Geo. 2. c. 18. s. 1. Eng. further provides, that the party who shall by virtue of the 3 Geo. 2. c. 25. or 6 Geo. 2. c. 37. apply for a special jury, shall not only pay the fees for striking such jury, but also the expenses occasioned by the trial of the cause by such jury, and shall not have any other allowance for the same upon taxation of costs, than such party would be entitled unto in case the cause had been tried by a common jury; unless the judge before whom the cause is tried, immediately after the trial, certify in open court under his hand upon the back of the record, that the same was a cause proper to be tried by a special jury. And by s. 2. no person who serves upon any jury appointed by authority of said acts, shall take for serving on such juries more than the sum which the judge who tries the issue thinks reasonable, not exceeding £1. 1s except in causes wherein a view is directed. The 17 &

‡ The 17 & 18 Geo. 3. c. 45. Ir. excepts indictments, informations for misdemeanors, and informations in the nature of a *quo warranto*.

18 Geo. 3. c. 45. s. 3. 5. & 6. Ir. contains clauses similar to the 3 Geo. 2. c. 25. s. 15. 16. & 17. *supra*; and further provides (s. 4.) that the special jury so struck shall be summoned by the sheriff, or other officer appointed to return the same, at least 6 days before the assizes or sittings at which such issue is to be tried. And by s. 7. if such sheriff, &c. shall omit to summon, by a note in writing, every person so struck or returned, 6 days before such assizes, &c. he shall forfeit such fine, not exceeding £50. and not less than £10. as the judge before whom such issue is to be tried, shall think reasonable; and said judge shall estreat such fines. By s. 8. every person so returned who shall not appear after being called 3 times, shall upon oath made by some credible person that such person had been summoned by a note in writing 6 days before the assizes, &c. forfeit (unless some reasonable cause of his absence be proved by oath to the satisfaction of the judge) such fine, not exceeding £20. and not less than £5. as the said judge shall think reasonable; and such judge shall estreat the same. By s. 9. where a special jury shall be awarded by virtue of this act, and a full jury shall not appear, or after appearance, by the challenge of any of the parties, the issue is like to remain untried for default of jurors, the judge upon request of the plaintiff or defendant, shall have authority to command the sheriff, &c. to name and appoint, as often as need shall be, 12 such other able persons of the said county then present, to whom no cause of challenge doth lie; and the names of the persons so named, with their additions and places of abode, shall be written on distinct pieces of parchment or paper, being all as near as may be of equal size, and shall be delivered to the clerk of the judge by the sheriff, &c. and shall by such clerk be rolled up all, as near as may be, in the same manner, and put together in a box or glass; and some indifferent person by direction of the court in open court, shall draw out said parchments, &c. until a number shall appear sufficient with those of the original panel, who appear, to make up the number of 12. And by s. 10. every trial had by such jury shall be as effectual as if had by 12 of the jurors originally struck.

s. 4.

*Special jury
when summoned*

s. 7.

*Penalty for not
so summoning.*

s. 8.

*Special jurors
how fined for
non-attendance.*

s. 9.

*On default of
such jurors tales
ordered.**Jury completed
by ballot.*

s. 10.

And

40 Geo. 3. c. 72.
s. 6. Ir.

*Expenses at-
tending special
juries to be paid
by person apply-
ing; unless
judge certifies,
&c.*

s. 7.

*Special jury to
be paid £1. 2s.
9d. each.*

*Justices of nisi
prius for the
county Middle-
sex may, within
14 days after
term, try issues.*

18 Eliz. c. 12.
Eng.

12 Geo. 1. c. 31.
Eng.

24 Geo. 2. c. 18.
s. 5. Eng.

17 & 18 Car. 2.
c. 20. Ir.

21 & 22 Geo. 2.
c. 18. Ir.

31 Geo. 3. c. 30.
Ir.

*Inquests of city
or county of
Dublin, when
and by whom
tried.*

And the 40 Geo. 3. c. 72. s. 6. Ir. provides in a manner similar to the 24 Geo. 2. c. 18 Eng. *supra*, that the party who shall apply for a special jury, shall not only bear the fees for striking such jury, but shall also pay the other expenses occasioned by the trial of the cause by a special jury; and shall not have any further allowance for the same, upon taxation of costs, then such party would be entitled to in case the cause had been tried by a common jury; unless the judge before whom the cause is tried shall, immediately after the trial, certify in court under his hand upon the back of the record, that the same was a cause proper to be tried by a special jury. And by s. 7. each person who has served on a special jury shall be paid, by the party applying for such jury, the sum of £1. 2s. 9d.

By the 18 Eliz. c. 12. Eng. as amended by the 12 Geo. 1. c. 31. Eng. and 24 Geo. 2. c. 18. s. 5. Eng. it shall be lawful for the chief justice of K. B. the chief justice of C. B. and the chief baron of Exc. and in the absence of any of them for any other judge or baron of said courts, as justices of *nisi prius* for the county of Middlesex, at any time within 14 days after the end of any term, to try all such issues joined in the said courts as might be tried by an inquest of the county of Middlesex; and it shall be lawful, upon warning given to the adverse party as accustomed, to sue forth writs and records of *nisi prius* in Middlesex as in any other county. And all sheriffs, parties, witnesses, jurors, &c. shall be obliged to give their attendance, &c. and all trials so had shall be as good as if the same had been tried in the term, at the bar of such court, (as was formerly used). The 17 & 18 Car. 2. c. 20. Ir. as amended by the 21 & 22 Geo. 3. c. 18. Ir. and 31 Geo. 3. c. 30. Ir. provides, that it shall be lawful for the chief justice of K. B. the chief justice of C. B. and chief baron of Exc. and in the absence of any of them, for any other judge or baron of said courts, as justices of *nisi prius* for the county of Dublin, and county of the city of Dublin, within the term, and at such time after the term as the said chief justices, &c. shall appoint, to try all such is-
sues

sues as by law they are enabled to try by an inquest of the said city or county of Dublin; and commissions and writs of *nisi prius* shall be awarded in such cases, and in such form, as they have been used in any other shire. And all sheriffs, officers, parties, witnesses, jurors, and others, shall give their attendance, &c. All which trials shall be as good as if tried in the term-time at the bar of such courts respectively.

To remedy the inconveniences arising to jurors im-
panelled on juries, by the delays in suing writs of *nisi prius*; it was provided by the 7 Ric. 2. c. 7. E. & I. that in all pleas where a writ of *nisi prius* is grantable of office, after the great distress returned, and 3 times served against the jurors, and the parties demanded, if none of the parties will pursue, or if the parties refuse to have a writ of *nisi prius*, then at the suit of any of the jurors present, a writ of *nisi prius* shall be granted, and that as well in the exchequer as elsewhere. And the 7 & 8. W. 3. c. 32. s. 1. Eng. also recites, that jurors returned upon writs of *nisi prius* were compelled to attend at several assizes for trial of the same cause, to their great expense and trouble; and therefore provides, that if any plaintiff or demandant in any cause in the courts at [*Westminster] which shall be at issue, shall sue forth a *venire facias*, upon which any *habeas corpora* or *distringas* with a *nisi prius* shall issue, in order to the trial of such issue at the assizes,† and such plaintiff, &c. shall not proceed to trial at the first assizes;‡ in all such cases (other than where views by jurors are directed) the plaintiff, &c. whensoever he shall think fit to try the issue, shall sue forth a new *venire* in this form:§ *Quod de novo venire facias coram, &c. duodecim liberos et legales homines de vicineto de A. quorum quilibet habeat decem librat. terræ, tenementor. vel reddituum, per annum ad minus, per quos, &c. et qui nec, &c.*; which writ being returned and filed, a *habeas corpora* or *distringas* with a *nisi prius* shall

Nisi prius granted at the suit of jurors.

7 Ric. 2. c. 7. E. & I.

7 & 8 W. 3. c. 32. s. 1. Eng.

Venire de novo when sued by plaintiff.

*"Dublin" in 29 Geo. 2. c. 6. Ir.

† "or next sittings" added in 29 Geo. 2. c. 6. Ir.

Form of the writ.

† "Or the sittings in the court of K. B. C. B. or Exc. in or after term for trial by *nisi prius*," added by 29 Geo. 2. c. 6. Ir.

§ No form is prescribed by the 29 Geo. 2. c. 6. Ir.

Venire de novo
may be sued by
defendant.

shall issue thereupon, (for which the ancient fees shall be taken, as in case of the *pluries habeas corpora* or *distringas*;) upon which the plaintiff, &c. may proceed to trial as if no former *venire facias* had been filed, and so *toties quoties*; and if any defendant or tenant, in any action in the said courts, shall be minded to bring to trial any issue, when by the course of the court he may do the same by *proviso*, such defendant, &c. shall, of the issuable term next preceding such intended trial, sue out a new *venire* by *proviso*, and prosecute the same by *habeas corpora* or *distringas* with a *nisi prius*, as though there had not been any former *venire* sued out or returned, and so *toties quoties*. And by s. 2. every writ of *venire facias*, and every writ of *habeas corpora* or *distringas* with a *nisi prius*, sued out according to the directions of this act, and all entries and proceedings thereupon, shall be good, and not assignable for error. The 29 Geo. 2. c. 6. Ir. contains similar clauses.

29Geo. 2. c. 6.
s. 10 & 11. Ir.

Where the trial
delayed, judg-
ment as in case
of a non-suit.

14Geo. 2. c. 17.
s. 1. Eng.

*" in any of his
majesty's
courts of re-
cord" in 28Geo.
3. c. 31. Ir.

To prevent inconveniences arising to parties from delays of causes after issues joined, the 14 Geo. 2. c. 17. s. 1. Eng. provides, that where any issue shall be joined [*in any court of record at Westminster, the court of great session for Wales, the court of great session for the county palatine of Chester, the court of common pleas for the county palatine of Lancaster, or the court of pleas for the county palatine of Durham,] and the plaintiff shall neglect to bring such issue on to be tried according to the course of the said courts, it shall be lawful for the judges of the said courts respectively, upon motion in open court, (due notice having been given thereof) to give the like judgment† for the defendant as in cases of nonsuit; unless the judge shall upon reasonable terms allow further time for the trial of such issue; and if the plaintiff neglect to try such issue within the time allowed, then the judge shall give such judgment as aforesaid. By s. 2. all judgments given by this act shall be of the like effect as judgments upon nonsuit. And by s. 3. the defendant shall upon such judgment be awarded his costs, in any action where he would upon nonsuit be entitled to the same. The 28 Geo. 3. c. 31.

†" and award
costs" added in
28Geo. 3. c. 31.
Ir.

s. 2.

s. 3.

28Geo. 3. c. 31.
s. 2. Ir

s. 2.

s. 2. Ir. has incorporated these 3 sections of the 14 Geo. 2. c. 17. Eng.

By the 14 Geo. 2. c. 17. s. 4. Eng. no indictment, Time for giving notice of trial. information, or cause, shall be tried at *nisi prius*, 14 Geo. 2. c. 17. s. 4. Eng. before any judge of assize or *nisi prius*, or at the sittings in London or Westminster, where the defendant resides above 40 miles from the said cities respectively, unless notice of trial in writing has been given 10 days before. And by s. 5. in case any party shall have given s. 5. such notice of trial, and shall not afterwards duly countermand the same in writing, 6 days before such intended trial, every such party shall be obliged to pay unto the party unto whom such notice was given, the like costs as if such notice had not been countermanded. Time for countermanding notice. No statute in Ireland prescribes any time for notices of trial, or for countermanding the same.

II. To prevent delays where a peer is party by *challenges to the array* for want of a knight being returned on the panel, the 24 Geo. 2. c. 18. s. 4. Eng. enacts, that § 2 no challenge shall be taken to any panel of jurors, for No challenge to array for want of a knight being returned. want of a knight's being returned in such panel, nor any 24 Geo. 2. c. 18. s. 4. Eng. array quashed by reason of any such challenge: Which 25 Geo. 3. c. 31. Ir. is also a provision of the 25 Geo. 3. c. 31. Ir. The clause of the 4 Ann. c. 16. Eng. and 6 Ann. c. 10. Ir. which abolishes the challenge for want of hundredors in civil actions, has been already stated,* as also the clause of the * ante p. 233. 24 Geo. 2. c. 18. Eng. which extends this provision to penal actions, &c. But with respect to challenges to the array by reason of an alien being party to the suit, the 28 Edw. 3. c. 13. s. 2. E. & I. (which is confirmed by 28 Edw. 3. c. 13. s. 2. E. & I. the 8 Hen. 6. c. 29. E. & I.) enacts, that in all inquests 8 Hen. 6. c. 29. E. & I. and proofs between aliens and denizens, be they merchants or other, although the king be a party, the one half of the inquest, &c. shall be denizens, and the other half An inquest shall be de medietate linguæ where an alien is party. aliens, if so many aliens and foreigners be in the place; and if there be not so many aliens, then there shall be put in such inquests as many aliens as shall be found, which be not parties, and the remainder denizens which be not favourable to either party. The statutes which relate to challenges to the polls for defect of estate, have been

been already stated in this chapter. But it may be proper here to refer to the 33 Hen. 8. st. 1. c. 4. Ir. which relates as well to challenges to the array, as to the polls *propter affectum*. This statute recites, that the king's English subjects of this land were for the most part allied together either by consanguinity or affinity, at the least within the 9th degree, by reason that they inhabited in so little a compass or circuit, and were restrained by statute to marry with the Irish nation, and therefore married themselves together, by reason whereof causes were greatly delayed by challenging the array or polls; and therefore enacts, that consanguinity or affinity (being not within the 5th degree) between the juror impanelled, or his wife, and any of the parties to the same inquest or trial, or the wife of the same parties; or between the sheriff, under-sheriff, coroner, or other officer that shall return or array any panel or jury in any inquest, &c. or the wife of any of them, and any of the parties to the same inquest, &c. or the wife of the same parties, shall be no principal challenge. But as the English settlers are no longer confined within a narrow pale, and as the 28 Hen. 8. c. 28. Ir. which restrained intermarriages with the native Irish, has been repealed by the 11. 12. & 13. Jac. 1. c. 5. Ir. this statute, which altered the common law principle or limit of challenges *propter affectum*, seems to have been, therefore, rendered obsolete. It is also proper to notice in this place the clause of the 29 Geo. 2. c. 6. Ir. which provides (s. 12.) that where by the 8 Ann. c. 3. or by any other law, persons of the popish religion are rendered incapable of being jurors; or on the trial of any issues or action depending in the courts of K.B. C. B. or Exc. where such action is commenced and carried on by a protestant against a papist, or a papist against a protestant; it shall be lawful to challenge any papist returned as a juror in any such case, and assign for cause that the person so returned is a papist; which challenge the said judge shall allow. But this provision seems to be indirectly repealed by the 33 Geo. 3. c. 21. s. 1. Ir.* as to such catholics as shall take and subscribe the oaths and declaration prescribed by this act (s. 14.) Other special grounds of challenge, as well as special exemptions from the

33Hen. 8. st. 1.
c. 4. Ir.

Consanguinity
or affinity not
within the 5th
degree, no prin-
cipal challenge,
Qu?

29 Geo. 2. c. 6.
s. 12. Ir.

In actions be-
tween protestant
and papist,
challenge lies to
a papist.

33Geo.3. c. 21.
s. 1 & 14. Ir.

This disability of
catholics condi-
tionally repealed.

the duty of serving on juries, are given by particular clauses of certain statutes; which I shall, however, omit, as of too special a nature for this work.

III. With respect to the *law of evidence*: the 7 Jac. 1. §. 3. c. 12. Eng. provides, that no tradesman or handicraftsman keeping a shop-book, his executors or administrators, shall be allowed to give his shop-book in evidence, in any action for money due for wares delivered, or work done, above one year before the action brought; except he, his executors, &c. shall have obtained a bill of debt, or obligation of the debtor, or shall have brought some action for the debt within one year after the wares delivered, &c. But by s. 2. this act shall not extend to any intercourse of buying, selling, or other trading or dealing between merchant and merchant, merchant and tradesman, or between tradesman and tradesman, for any thing directly falling within the compass of their mutual trades and merchandizes. By the 41 Geo. 3. c. 90. s. 9. U. K. the copies of the statutes of the kingdom of England, and of the kingdom of Great Britain since the union with Scotland, printed and published by the printer duly authorized to print and publish the same by the king, shall be received as conclusive evidence of the said several statutes in any court of civil or criminal jurisdiction in Ireland; and the copy of the statutes of the kingdom of Ireland, made by the parliaments of the same, prior to the union of Great Britain and Ireland, and printed and published by the printer duly authorized by the king, shall be received as conclusive evidence of said statutes in any court of civil or criminal jurisdiction in Great Britain.

As to parol evidence: For obviating objections to the competency of witnesses in certain cases, the 27 Geo. 3. c. 29. Eng. enacts, that the inhabitants of every parish, township, or place, shall be competent witnesses for proving the commission of any offence within the limits of such parish, &c. notwithstanding the penalty incurred by such offence, or any part thereof, is given to the poor of such parish, &c. in aid or exoneration of such parish, &c. Provided (s. 2.) that nothing in this act shall extend to any action or proceeding in which the penalty to be recovered shall

In what cases a tradesman's shop-book shall be evidence.

7 Jac. 1. c. 12. s. 1. Eng.

s. 2.

Proviso.

41 Geo. 3. c. 90. s. 9. U. K.

Printed statutes of England, Great Britain, and Ireland, respectively, evidence.

Inhabitants' competent to prove offences though place benefited by conviction;

27 Geo. 3. c. 29. Eng.

s. 2.

Unless penalty exceed £20.

31 Geo. 3. c. 35. Eng. exceed £20. To which there is no similar statute in Ireland. And the 31 Geo. 3. c. 35. Eng. recites, that persons convicted of grand larceny are by their punishment restored to their credit as witnesses, but persons convicted of petit larceny are rendered and remain wholly incompetent to be examined as witnesses; and therefore enacts, that no person shall be an incompetent witness by reason of a conviction for petit larceny. The

Persons convicted of petit larceny competent witnesses.

36 Geo. 3. c. 29. Ir.

46 Geo. 3. c. 37. U. K.

What questions witnesses are bound to answer.

5 Eliz. c. 9. s. 13. Eng.

Penalty for witnesses refusing to give evidence.

Quakers how to give evidence.

7 & 8 W. 3. c. 34. s. 1 & 2. Eng.

(8 Geo. 1. c. 6. Eng.)

s. 3.

False affirmation equivalent to false oath.

36 Geo. 3. c. 29. Ir. is a transcript of this act. And the 46 Geo. 3. c. 37. U. K. declares and enacts, that a witness cannot refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only, or on the sole ground, that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of the king or of any other person. It is a provision of the 5 Eliz. c. 9. s. 12. Eng. that if any person upon whom process out of any court of record shall be served, to testify concerning any matter depending in the same court, and having tendered, according to his countenance or calling, such costs as having regard to the distance of the place is necessary, do not appear according to the process, having no reasonable impediment; he shall forfeit £10. and yield such further recompense to the party grieved, according to the discretion of the judge of the court out of which the process issued; to be recovered by action of debt, &c. in any court of record. No similar provision is contained in any Irish statute.

Next as to the mode of giving evidence: by the 7 & 8 W. 3. c. 34. s. 1 & 2. Eng. (as amended by the 8 Geo. 1. c. 6. Eng.) every quaker who shall be required upon any lawful occasion to take an oath, where by law an oath is required, shall, instead of the usual form, be permitted to make the solemn affirmation following "I, *A. B.* do solemnly, sincerely, and truly, declare, and affirm." And by s. 3. if any quaker, making such affirmation, shall be convicted wilfully, falsely, and corruptly, to have affirmed any matter, which, if the same had been in the usual form, would have amounted to

to wilful and corrupt perjury, he shall incur the penalties of wilful and corrupt perjury. Provided (s. 6.) that no quaker shall be by this act qualified to give evidence in any criminal cause, or serve on any juries, [or bear any office of *profit in the government.] The 19 Geo. 2.c.18. s. 6.

Ir. contains similar provisions: but further provides, that no person shall be deemed a quaker, unless he shall affirm in form aforesaid, that he is of the profession of the people called quakers, and hath been so for one year then last past. The 22 Geo. 2. c. 46. Eng. amends the 7 & 8 W 3.c.34. and 8 Geo. 1. c. 6. by further providing, that in all cases wherein by any act of parliament now in force, or hereafter to be made, an oath is required, the affirmation of a quaker in the form above mentioned shall be allowed instead of such oath, although no express provision be made. No Irish statute contains any such provision. By the 22 Geo. 2. c. 30. Eng. every member of the protestant episcopal church, known by the name of *Unitas Fratrum*, or the United Brethren, who shall be required to take an oath, shall, instead of the usual form, be permitted to make his solemn affirmation in these words following: "I, *A. B.* do declare "in the presence of Almighty God, the witness of "the truth of what I say:" Which affirmation shall be of the same force in all courts of justice, and other places where by law an oath is required in Great Britain or Ireland, and in his majesty's dominions in America, as if such person had taken an oath in the usual form. And by s. 2. any person making such affirmation, who shall be convicted wilfully, falsely, and corruptly, to have affirmed any thing, which if deposed on oath would have amounted to wilful and corrupt perjury, shall incur the same penalties as persons convicted of wilful and corrupt perjury. But by s. 3. no person being of the said church shall by this act be qualified to give evidence in any criminal causes, or to serve on juries. By s. 5 every person who shall claim the benefit of this act, shall, when he makes such claim, produce a

s. 6.
Proviso as to criminal cases, &c.
 19 Geo.2.c.18.
 Ir.
Quaker not deemed one till after a year.
 22 Geo. 2. c. 46
 s. 36. Eng.
Though statutes require an oath, affirmation allowed.
 22 Geo.2.c.30.
 s. 1. Eng.
United brethren allowed to make affirmation instead of an oath.
 s. 2.
Penalty of false affirming.
 s. 3.
Exception of criminal cases, &c.
 s. 5.
Certificate, &c. required.

* The 19 Geo. 2. c.18. Ir. excludes quakers from offices of trust also.

certificate signed by some bishop of the said church, or by the pastor of the church or congregation nearest to the place where such claim is made; and shall be examined concerning the said certificate, and the execution thereof; and such person so affirming to the best of his knowledge and belief in manner before mentioned, or proving by the testimony of other legal witness that the said certificate was duly executed by such bishop or pastor, and affirming that he is a member of the said church, shall be deemed a member of the said church, and be entitled to the benefit of this act. And by s. 6. any person convicted of having wilfully, falsely, and corruptly affirmed that such certificate was duly executed, or that he is a member of such church, shall incur the same penalties as persons convicted of wilful and corrupt perjury. By s. 7. the advocate of the said church shall lay before the commissioners for trade and plantations, to remain in their office, a list of all the bishops of the said church appointed by them to grant certificates, with their hand-writing, and usual seal; and the said advocate shall send to the commissioners for trade and plantations the names, hand-writing, and seals, of any bishops hereafter consecrated and appointed as aforesaid, and the names of pastors authorized by the said advocate or bishops to give certificates in any of the colonies in America. And in respect to his majesty's protestant dissenting subjects in Ireland, called seceders, the 21 & 22 Geo. 3. c. 57. s. 1 & 2. Ir. provides, that every seceder who shall upon any lawful occasion be required to take an oath, in any case where an oath is or shall be required to be taken, shall, instead of the usual form, be permitted to take his oath in the form and words following: viz. by holding up his right hand as the sign of an oath, and by repeating these "words: " I do solemnly and sincerely swear before Almighty God," which shall be of the same force in all courts of justice, and other places, as if such seceder had taken an oath in the usual form; and shall be so administered to said persons. By s. 3. every person who shall have taken such oath, and shall be convicted of wilfully, falsely, and corruptly having sworn any thing, which

s. 6.

Penalty for producing false certificates, &c.

s. 7.

Lists of bishops of said church appointed to grant certificates, &c. where registered.

21 & 22 Geo. 3.
c. 57. s. 1 & 2.
Ir.

Mode of seceder's taking an oath.

s. 3.

False swearing in such manner, perjury.

which if the same had been sworn in the usual form would have amounted to wilful and corrupt perjury, shall incur the penalties of wilful and corrupt perjury. By s. 4. no seceder shall by this act be qualified to give evidence in any criminal causes, or serve on any juries, or bear any place of trust or profit under the government. *Exception as to criminal cases, &c.* And by s. 5. no person shall be deemed a seceder, unless he shall swear in the manner aforesaid, that he is of the profession of the people called seceders, and hath been so for one yeart hen last past. An exception to the principle which requires the open examination of witnesses, *viva voce*, before the jury, is introduced by the 13 Geo. 3. c. 63. Eng. which provides for the issuing commissions for the examination of witnesses to India, [in cases of indictments or informations laid or exhibited in the court of king's bench at Westminster;] and in cases of impeachments or proceedings in parliament touching offences committed in India;] as also in cases of actions or suits commenced in any of his majesty's courts at Westminster, for causes arising in India. The 33 Geo. 3. c. 31. Ir. which extended to Ireland a qualified liberty of trading directly to India, amongst its other provisions for regulating the intercourse between this country and the British settlements in that quarter of the globe, did not include or adopt the above provision of the 13 Geo. 3. c. 63. *Seceder not deemed one till after a year.* *13 Geo. 3. c. 63. Eng.* *Commissions to issue for examination of witnesses in India.*

IV. To this head of trial by jury is to be referred the 13 Edw. 1. st. 1. c. 31. E. & I. which provides, that when one impleaded before any of the justices shall allege an *exception*, praying that the justices shall allow it, which, if not allowed, if he that allegeth the exception shall write the same, and require that the justices shall put their seals for a testimony, the justices or one of them shall so do, and if one will not, another shall; and if the king, upon complaint made of the justices, cause the record to come before him, and the same exception be not found in the roll, and the party shew the exception written with the seal of the justice thereto, the justice shall be commanded that he appear at a certain day to confess or deny his seal; and if the justice cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed. The *§. 4.* *Bill of exceptions to be sealed by the justice to whom tendered.* *13 Edw. 1. st. 1. c. 31. E. & I.*

28 Geo. 3. c. 31. s. 1. Ir.

In Ireland sufficient if judge signs the bill of exceptions.

Such exceptions examinable in the court where action brought.

28 Geo. 3. c. 31. s. 1. Ir. recites, that it hath been holden that bills of exceptions taken to the opinion of a judge at *nisi prius*, are not examinable in the court in which the action is brought, and can only be examined upon a writ of error brought in a superior court; and therefore enacts, that it shall be sufficient if the judge, to whom such bill of exceptions shall be tendered, sign the same; and it shall not be necessary to put his seal thereto; and such bill of exceptions so signed, shall remain with the clerk of *nisi prius*, and be incorporated in the *postea*, and be returned therewith to the court in which the action is brought; which court shall have authority to examine the same, and give judgment thereon, or make such order, either by arresting the judgment, granting a *venire facias de novo*, or otherwise, as shall be agreeable to justice. This statute is peculiar to Ireland.

CHAP. XXIV.

Of Judgment, and its Incidents.

Judgment entered within 2 terms after verdict, notwithstanding death of party.

17 Car. 2. c. 8. Eng.

7 W. 3. c. 7. s. 2. Ir.

3 & 9. W. 3. c. 11. s. 6. Eng.

9 W. 3. c. 10. s. 6. Ir.

Death of either party between interlocutory and final judgment, no abatement of action.

WITH respect to the time and manner of entering judgments: the 17 Car. 2. c. 8. Eng. provides, that in all actions personal, real, or mixt, the death of either party, between the verdict and the judgment, shall not be alleged for error, so as such judgment be entered within 2 terms after such verdict: Which is also the provision of the 7 W. 3. c. 7. s. 2. Ir. And by the 8 & 9 W. 3. c. 11. s. 6. Eng. in all actions in any court of record, if any plaintiff happen to die after an interlocutory judgment, the action shall not abate, if such action might be originally maintained by the executors or administrators of such plaintiff: and if the defendant die after interlocutory judgment, and before final judgment, the action shall not abate, if the action might be originally

nally prosecuted against the executors or administrators of such defendant; and the plaintiff, or his executors or administrators, shall have a *scire facias* against the defendant, his executors or administrators, to shew cause Proceeding in such cases. [*why damages in such action should not be assessed and recovered;] and if such defendant, &c. shall appear at the return of such writ, and not allege matter sufficient to arrest the final judgment, or (being returned warned, or upon 2 writs of *scire facias* it be returned that the defendant, &c. had nothing whereby to be summoned, or could not be found in the †county) shall † “Bailiwick” in 9 W. 3. c. 10. Ir. make default, a writ of inquiry shall be awarded, which being executed and returned, judgment final shall be given. A similar provision is contained in the 9 W. 3. c. 10. Ir.

By the 29 Car. 2. c. 3. s. 14. Eng. any judge or officer of the king's courts at Westminster, that shall sign any judgments, shall, without fee, set down the day of the month and year upon the paper-book, docket, or record, which he shall sign; which day of the month, &c. shall be also entered on the margin of the roll. And by s. 15. such judgments, as against purchasers for valuable consideration of lands, shall in consideration of law be judgments, only from such time as they shall be signed, and shall not relate to the first day of the term, or the day of the return of the original, or filing bail: The day of signing judgments to be entered in the roll. Which provisions are extended to Wales and the counties palatine by the 8 Geo 1. c. 25. s. 6. Eng. 29 Car. 2. c. 3. s. 14. Eng. And the 7 W. 3. c. 12. Ir. contains clauses precisely similar. s. 15. But the 3 Geo. 2. c. 7. s. 1. Ir. further provides, that upon the docket or record of every judgment acknowledged before and signed by any judge or baron of K. B. C. B. or Exc. as soon as the same is brought into the proper office to be entered of record, the officer whose business it is to enter the same, shall upon such docket or record, mark the day of the month and year that the same is Relation of judgments as against purchasers.

* Instead of the words within the crotchets, the words of the 9 W. 3. c. 10. Ir. are “why notwithstanding such death, the plaintiff in said writ of *scire facias*, his executors, &c. should not proceed to final judgment, for the recovery of such debt or damage for which such action was brought.”

s. 2.

Deemed (as
against purcha-
sers, &c.) judg-
ments only from
the time when
entered and
signed.

4 & 5. W. & M.
c. 20. Eng.

Judgments to be
doggeted.

brought into the office to be entered upon record; which day of the month and year shall also be entered upon the margin of the roll where the said judgment shall be entered, as well as the day of the month and year when such judgment was acknowledged before and signed by the judge. And by s. 2. such judgments as against purchasers or mortgagees, *bona fide*, for valuable consideration, shall be judgments only from such time as they shall be brought into the proper office to be entered of record, and signed by the proper officer on such docket; and shall not have any preference against heirs, executors, or administrators, in their administration of estates, but from the time aforesaid. And by the 4 & 5 W. & M. c. 20. Eng. the clerk of the essoins of the common pleas, every clerk of the doggets of the king's bench, and the master of the office of pleas in the exchequer, shall in every Easter term put into an alphabetical dogget by the defendants names, a particular of all judgments for debt by confession, *non sum informatus*, or *nihil dicit*, entered in the said respective courts of the term of Hilary preceding, which shall contain the names of the plaintiffs, the names of the defendants, their places of abode, title, trade or profession, (if any such be in the record;) and the debt, damages, and costs recovered; and in what county, city, or town, the actions were laid, and the number-roll; and every clerk of the judgments, and every other clerk of the common pleas and king's bench, shall bring to the clerks of the doggets, notes of the judgments by them entered, of the said term of St. Hilary, upon verdicts, writs of inquiry, demurrer, and every other judgment for debt or damages as aforesaid; and the clerk of the judgments, and every other clerk of the exchequer, shall bring to the master of the office of pleas, the like note of all judgments by them entered of the said term as aforesaid; and the respective officers and clerks of the said courts shall likewise, before the last day of every Michaelmas term, make the like dogget containing all such judgments of the terms of Easter and Trinity then last past; and shall likewise, before the last day of every Hilary term, make the like dogget

dogget containing all such judgments of the term of St. Michael then last past; and the said doggets shall be kept in books of parchment in the respective offices, to be searched by all persons, paying to the respective officers, for every term's search for judgments against any one person, 4*d.* and no more; upon pain that every clerk before mentioned, shall, for every term in which he shall neglect his duty in the premises, forfeit £100, one moiety to the party aggrieved, and the other moiety to him who shall sue for the same in any court of record at Westminster. And by s. 3. no judgment not doggetted as aforesaid shall affect any lands as to purchasers or mortgagees, nor have any preference against heirs, executors, or administrators, in their administration of estates. By s. 4. there shall be paid by the plaintiffs in every of the said judgments to be entered, over and above the fees now due, 4*d.* And for the better discovery of judgments, and the greater security of purchasers the 3 Geo. 2. c. 7. s. 3. Ir. in a similar manner provides, that the proper officer of every court shall put into an alphabetical docket, by the defendants names, an entry of all *cognovits* or judgments acknowledged before any judge or baron, and delivered into the office, and of all rules for judgments upon verdicts, writs of inquiry of damages, demurrer, and every other rule for judgment for debt or damages made, &c. in any term, before the first day of the succeeding term; which entry shall contain the names of plaintiffs and defendants, their places of abode and addition, if such there be in the record, and the debt or damages recovered thereby; and when judgment is entered upon the roll of record pursuant to such dockets or rules, such officer shall, upon the margin of such alphabetical docket, mention the term when such judgment was entered; and such dockets shall be kept in books, in the respective offices, to be viewed by all persons at all reasonable times. And by s. 4. there shall be paid by the plaintiffs in such judgments, above the fees now due for the same, 4*d.* And the 8 Geo. 1. c. 6. s. 8. Ir. provides, that the prothonotaries of the courts of chief place and common pleas, the clerk of the pleas of the exchequer, and the clerk of the recognizances

*Fee for search.**Penalty for default of officer.*

s. 3.

Judgments not doggetted shall not affect purchasers, &c.

s. 4.

*Fees to clerk of judgments.*3 Geo. 2. c. 7.
s. 3. Ir.*Judgments docketed in Ireland.*

s. 4.

*Clerk's fee.*8 Geo. 1. c. 6.
s. 8. Ir.*Prothonotaries, &c. to give certificates of judgments, &c.*

recognizances and statute staple of the court of chancery, and their deputies, when any search is required to be made by them, concerning any judgments, statutes staple, statutes merchant, or recognizances, entered since 29th of May, 1660, when no judgment, &c. can be found entered in any of said courts, against the person concerning whom such search is made, then such prothonotaries, clerk of the pleas, and clerk of the recognizances, &c. or their deputies, shall give a certificate that having made diligent search in their respective offices they do not find any judgment, &c. entered against such person; or if any judgments, &c. be entered against such person, then they shall respectively certify that they only find such judgments, &c. entered, and no other; which certificates the said prothonotaries, &c. shall sign, and give under their respective hands, to the person requiring the same; and if any of the officers aforesaid, or their deputies, shall be guilty of any fraud, collusion, or wilful neglect in making out any such certificate, whereby any person shall be damnified, such person, his heirs, executors, or administrators, shall recover his damages against such officer, or his deputy, with full costs.

6 Geo. 1. c. 6.
s. 18. Ir.

No satisfaction
of judgment to
be entered on
motion of attor-
ney, without
proof of warrant
by affidavit to be
filed.

The 6 Geo. 1. c. 6. s. 18. Ir. provides, that no satisfaction shall be entered on the record of any judgment, upon the motion of any attorney, except the said attorney shall prove his warrant for acknowledging such satisfaction by affidavit of one witness in writing, to be filed in the office where such judgment is acknowledged.

§ 2.

Capias pro fine
taken away.

5 W. & M. c. 12.
Eng.

II. The 5 W. & M. c. 12. Eng. recites, that in actions of trespass, ejectment, assault, and false imprisonment, upon judgments entered against defendants in such actions, the respective courts issued out process *ex officio* against such defendants for a fine to the crown for a breach of the peace, and often outlawed the defendants for the same; which fine was usually compounded by some officer for a small sum which was never estreated into the exchequer; this act therefore provides, that no such writ called *capias pro fine* shall in future be sued out in any of the said actions against any defendant, but the plaintiff in every such action shall, upon signing the judgment

judgment therein, pay to the proper officer signing the same, 6s. 8d. in satisfaction of said fine, and of all fees concerning the same; which sum is accordingly to be taxed and included in his costs against the defendant.

*To which there is no corresponding statute in Ireland.

III. The statute of Gloucester, 6 Edw. 1. c. 1. E. & I. § 3.

which gave costs in all cases where the party recovered damages, has been already stated (*ante* page 159): and other statutes giving costs expressly to plaintiffs in particular cases, will be found in several parts of this work to which they more peculiarly belong.

Costs follow damages.

6 Edw. 1. c. 1. E. & I.

But the 8 & 9

8 & 9 W. 3. c. 11. s. 3. Eng.

W. 3. c. 11. s. 3. Eng. is to be here stated, which enacts

Costs given to plaintiffs in actions of waste, debt for not setting forth tithes, scire facias, and prohibition

that in all actions of waste, and actions of debt upon the statute for not setting forth tithes, wherein the single value or damage found by the jury shall not exceed the sum of 20 nobles, and in all suits upon writs of *scire*

facias, and suits upon prohibitions, the plaintiff obtain-

ing judgment, or any award of execution, after plea

pleaded, or demurrer joined therein, shall likewise

recover his costs of suit; and if the plaintiff shall become

nonsuit, or suffer a discontinuance, or a verdict shall

pass against him, the defendant shall recover his costs,

And to defendants.

and have execution for the same by *Ca. Sa. Fi. Fa.* or

elegit. The 9 W. 3. c. 10. s. 3. Ir. also provides, that

9 W. 3. c. 10. s. 3. Ir.

if any person bring any action of waste, or action of debt

Analogous provisions.

upon the statute for not setting forth tithes, in which several

actions the single value or damage found by the jury

shall not exceed £3; the plaintiff recovering either by

judgment upon verdict, or demurrer, shall likewise recover

his costs at the discretion of the justices: and if any

person shall sue forth any writ of *scire facias*, or commence

any suit in prohibition, and recover judgment,

either by verdict or upon demurrer, such plaintiff shall

likewise recover his costs, &c. and if, in any of the suits

aforesaid, the plaintiff shall become nonsuit, or verdict

pass against him, or shall discontinue his suit, the defendant

shall recover his costs in such manner as the plaintiff

should have done; and such party so recovering may

of the court where such action shall be.

* It may be here observed that by the 52 Hen. 3. c. 11. E. & I. fines for *beau-pleader* were abolished.

5 Geo. 2. c. 4.
s. 7. Ir.

4 Geo. 1. c. 13.
Ir.

23 Hen. 8. c. 15.
s. 1. Eng.

Defendant to
have costs of non-
suit or verdict in
certain actions.

sue execution for such costs by *Ca. Sa. Fi. Fa.* or *elegit*. But this clause of the 9 W. 3. c. 10. Ir. is amended by the 5 Geo. 2. c. 4. s. 7. Ir. which enacts, that where any person shall sue forth any writ of *scire facias*, and shall recover and have judgment where plea of *nul tiel record* is pleaded, every such plaintiff so recovering judgment shall have his costs of suit, in such manner as if such recovery had been either by verdict or upon demurrer. And the 9 W. 3. c. 10. s. 3. Ir. is further explained by the 4 Geo. 1. c. 13. Ir. which recites, that a doubt was made whether defendants in *scire facias* and prohibition, having judgment upon demurrer, should recover their costs; and therefore enacts, that in all such actions or suits where judgment shall upon demurrer pass against the plaintiff in such action, the defendant shall recover his costs of suit in such manner as the plaintiff should have done if he had recovered, and had judgment given for him in such action. The 7 Hen. 8. c. 4. Eng. and other statutes which gave costs to defendants in replevin have been already stated.* And the 23 Hen. 8. c. 15. Eng. provides, that if any person sue in any court of record, or in any other court, any action of trespass upon the 5 Ric. 2. st. 1. c. 8. or any action of debt or covenant upon any specialty made to such plaintiff, or upon any contract supposed to be made between the plaintiff and any person, or any action of detinue of goods where the plaintiff shall suppose that the property belongeth to him, or any action of account in which the plaintiff supposes the defendant to be his bailiff or receiver of the manor, mese, money or goods, or any action upon the case, or upon any statute for any offence or wrong personal immediately supposed to be done to the plaintiff; and the plaintiff after appearance of the defendant be nonsuited, or any verdict happen to pass against the plaintiff, the defendant shall have judgment to recover costs against such plaintiff, to be taxed by the discretion of the court where such action shall be. And every

* The 3 Hen. 7. c. 10. Eng. which gave costs to defendants in error will be stated in its proper place.

defendant in such action shall have such process and execution for the recovery of his costs, as the plaintiff might have had against the defendant, in case judgment had been given for the plaintiff. Provided (s. 2.) that every such poor person being plaintiff, which at the commencement of their actions be admitted by the judge to have their process and counsel of charity, shall not be compelled to pay costs by this statute, but shall suffer other punishment by the discretion of the judge. The 10 Car. 1. st. 2. c. 17. Ir. is the corresponding statute in Ireland. And the 4 Jac 1. c. 3. Eng. has further provided, that if any persons shall commence in any court, any action of trespass, *ejectione firmæ*, or other action whatsoever, wherein the plaintiff or demandant might have costs in case judgment should be given for him, and the plaintiff, &c. shall be nonsuited therein after the appearance of the defendant, or a verdict shall pass against him, then the defendant in every such action shall have judgment to recover costs against the plaintiff, &c. to be taxed and levied [*as by the 23 Hen. 8. c. 15. *supra*.] The 10 & 11 Car. 1. c. 8. Ir. is the corresponding statute in Ireland. By the 8 Eliz. c. 2. s. 2. Eng. upon process issuing out of the court of king's bench, if the plaintiff do not declare in 3 days after bail put in, or if after declaration he do not prosecute his suit with effect, but willingly suffer the same to be delayed or discontinued, or he be nonsuited therein, the judges, by their discretion, shall award to the defendant his costs, damages, and charges. And by s. 3. if any person shall procure any other to be attached or arrested to answer to any action in the marshalsea, or in any court within London, or in any city, town corporate, or place, where any liberty is used to hold plea in actions personal, and do not, in all courts having their continuance *de die in diem*, within 3 days after the defendant shall be bailed, or appear by force of any arrest or attachment, (and in all other courts at the next court to be holden after such arrests or

s. 2.

Proviso as to persons suing in forma pauperis.

10 Car. 1. st. 2. c. 17. Ir.

4 Jac. 1. c. 3. Eng.

10 & 11 Car. 1. c. 8. Ir.

Defendant to have costs of nonsuit or verdict in all actions.

8 Eliz. c. 2. s. 2. Eng.

Defendant to have costs where the plaintiff doth delay his suit, &c. in K. B.

s. 3.

So in the courts of cities, &c.

* The 10 & 11 Car. 1. c. 8. Ir. refers here to the 10 Car. 1. st. 2. c. 17. Ir.

Remedy for such costs.

8 & 9 W. 3. c. 11. s. 2. Eng. Defendant to have costs of judgment upon demurrer.

9 W. 3. c. 10. s. 2. Ir. Either party obtaining judgment upon demurrer, to have costs.

8 & 9 W. 3. c. 11. s. 1. Eng. In actions of trespass, &c. any defendant acquitted to have costs, as if all acquitted.

** "And battery" added in 9 W. 3. c. 10. Ir. † These actions not included in 9 W. 3. c. 10. Ir.*

attachments and appearance) unless a further day be given by the court, exhibit his declaration; or if after his declaration he do not prosecute his suit with effect, or shall suffer the same to be discontinued, or be nonsuited, or apparently for vexation delay the same, the judges of such court shall by their discretion, from time to time, award to such person so molested, his costs, &c. by occasion of such attachment, arrest and suit. And by s. 5. every person to whom any costs, &c. by this act shall be awarded, may have his remedy by action of debt, &c. in any court of record, against such persons, their heirs, executors, or administrators, as ought to pay the same. No similar statute has been passed in Ireland. The clause of the 13 Car. 2. st. 2. c. 2. Eng. and 7 W. 3. c. 25. Ir. which also gives costs to defendants in certain cases of *non-pros* has been already stated (*ante* p. 200-1). And the 8 & 9 W. 3. c. 11. s. 2. Eng. further provides, that if any person shall commence or prosecute any action or plaint in any court of record, wherein upon *demurrer*, either by plaintiff or defendant, demandant or tenant, judgment shall be given against the plaintiff, &c. [the defendant or tenant shall have judgment to recover his costs, and have execution for the same by *Ca. Sa. Fi. Fa.* or *elegit*. The 9 W. 3. c. 10. Ir. in a similar manner provides, (s. 2.) that if any person shall commence or prosecute any action or plaint in any court of record, whereupon any demurrer shall be joined by plaintiff or defendant, demandant or tenant, he for whom judgment shall be given upon such demurrer, shall have and recover his costs of suit, as if judgment had been given upon a verdict for such party therein. It is also a provision of the 8 & 9 W. 3. c. 11. s. 1. Eng. that where several persons shall be made defendants, to any action of trespass, assault,* [†false imprisonment, or *ejectione firmæ*,] and any one or more of them shall be upon the trial thereof acquitted by verdict, every person so acquitted shall recover his costs of suit, in like manner as if the verdict had been given against the plaintiff, and acquitted all the defendants; unless the judge before whom the cause is tried, shall immediately after the trial thereof

thereof, in open court, certify upon the record under his hand, that there was a reasonable cause for making such person a defendant. The 9 W. 3. c. 10. s. 1. Ir. contains a similar provision.

Unless judge certifies, &c.

9 W. 3. c. 10. s. 1. Ir.

But the plaintiff's right to costs is restrained in certain cases by the following statutes. By the 43 Eliz. c. 6. s. 2. Eng. if in any personal action to be brought in any of her majesty's courts of Westminster, not being for any title or interest of lands, nor concerning the freehold or inheritance of any lands, nor for any battery, it shall appear to the judges of the same court, and be so signified by the justices before whom the same shall be tried, that the debt or damages to be recovered therein, shall not amount to the sum of 40s., in every such case the judges or justices before whom such action shall be pursued, shall not award to the plaintiff any more costs than the sum of the debt or damages so recovered shall amount to, but less at their discretion. The 21 Jac. 1. c. 16. s. 6. Eng. further provides, that in all actions upon the case for slanderous words, to be sued in any of the courts at Westminster, or in any court that hath power to hold plea of the same, if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under 40s. then the plaintiff in such action shall have and recover only so much costs as the damages so given or assessed amount unto, without any further increase of the same. And by the 22 & 23 Car. 2. c. 9. s. 136. Eng.* in all actions of trespass, assault and battery, and other personal actions, wherein the judge, at the trial of the cause, shall not find and certify under his hand, upon the back of the record, that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question; the plaintiff, in case the jury shall find the damages to be under the value of 40s. shall not recover more costs of suit, than the damages so found shall amount unto: and if any more costs be awarded, the judgment shall be void; and the defendant may have

No costs for the plaintiff, where sum recovered does not amount to 40s. except in certain actions.

43 Eliz. c. 6. s. 2. Eng.

21 Jac. 1. c. 16. s. 6. Eng.

In slander if damages under 40s. plaintiff to have no more costs than damages.

22 & 23 Car. 2. c. 9. s. 136. Eng.

Certificate of judge in certain actions entitles plaintiff to costs though damages under 40s.

his action against the plaintiff for such vexatious suit, and recover his damages and costs in any court of record.

8 & 9 W. 3. c. 11. s. 4. Eng.

A further certificate in trespass entitles plaintiff to costs.

s. 5.

Proviso.

9 W. 3. c. 10. s. 4. & 5. Ir.

2 Geo. 1. c. 11. s. 14. Ir.

In trespass, &c. if damages under 40s. no more costs than damages.

s. 15.

Unless judge certifies, &c.

43 Geo. 3. c. 46. s. 4. E. & I.

Plaintiff bringing action on judgment shall not have costs, unless court so orders.

And by the 8 & 9 W. 3. c. 11. s. 4. Eng. in all actions of trespass in any court of record at [Westminster,] wherein at the trial of the cause it shall appear, and be certified by the judge, under his hand, upon the back of the record, that the trespass upon which any defendant shall be found guilty, was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit. Provided (s. 5.) that nothing herein shall alter the laws as to executors or administrators, where they are not at present liable to costs. The 9 W. 3. c. 10. Ir. contains corresponding provisions to those of the 8 & 9 W. 3. c. 11. And the 2 Geo. 1. c. 11. Ir. in a manner similar to the 43 Eliz. c. 6. 21 Jac. 1. c. 16. and 22 & 23 Car. 2. c. 9. *supra*, enacts (s. 14.) that in all actions of trespass, and for assault and battery, to be commenced in any of the Four Courts in Dublin, and in all actions on the case for slanderous words, to be sued by any person in any court of record that hath power to hold plea of the same, the plaintiff in such action, in case the jury shall find the damages to be under 40s. shall not recover more costs of suit than the damages so found shall amount unto; and if any more costs be awarded, the judgment shall be void. Provided (s. 15.) that if the judge at the trial of any action of assault and battery, or action of trespass, shall certify under his hand upon the back of the record, that the assault was sufficiently proved, or that the freehold and title of the land mentioned in the plaintiff's declaration was chiefly in question, or that the said trespass was voluntary and malicious, the plaintiff in such case shall have (though the jury should find the damages to be under 40s.) his full costs, as if this act had never been made. By the 43 Geo. 3. c. 46. s. 4. E. & I. in all actions which shall be brought in England or Ireland, upon any judgment recovered in any court in England or Ireland, the plaintiff shall not recover any costs, unless the court in which such action on the judgment shall be brought, or some judge of the same, shall otherwise order.

Besides the exception contained in the 23 Hen. 8. c. 15. s. 2. (*ante* page 271.) an exemption from costs

or

or expenses of suits was also made in favour of paupers by the 11 Hen. 7. c. 12. Eng. which provides, that poor persons shall have, by the discretion of the chancellor, writs original, and writs of *subpœna*, according to the nature of their causes, nothing paying for the seals, nor for the writing of the writs. And the chancellor shall assign clerks to write the same ready to be sealed, and also learned counsel and attornies, without any reward taking. And, after the writs returned, if it be before the king in his bench, the justices shall assign to the poor person counsel learned, which shall give their counsels, nothing taking: and likewise the justices shall appoint attornies for the same poor persons, and all other officers requisite for the speed of the said suits, which shall do their duties without reward for their help. And the same order shall be of all such suits in the common place and exchequer, and all other courts of record. And the 2 Geo. 2. c. 28. s. 8. Eng. further provides, that in case any person arrested and imprisoned by virtue of any writ of *capias*, or information relating to the customs, shall make affidavit before the judge or judges of such court where such action, &c. shall be brought, or before any person commissioned by such court to take affidavits, that he is not worth, over and above his wearing apparel, the sum of £5. and such person shall, thereupon, petition such court to be admitted *in forma pauperis*, then the judges of such court shall according to their discretions admit such person to defend himself against such action, &c. in the same manner, and with the same privileges, as the judges are authorized to admit poor subjects to commence actions for the recovery of their rights. No statute in Ireland contains provisions similar to the 11 Hen. 7. c. 12. or 2 Geo. 2. c. 28. though the 10 Car. 1. st. 2. c. 17. Ir. contains the same exception in favour of paupers as the 23 Hen. 8. c. 15. *ante* p. 271.

The 24 Hen. 8. c. 8. Eng. provides, that albeit the plaintiff shall be nonsuited in any action, &c. to be commenced or sued to the use of the king, or verdict pass against such plaintiff, the defendant shall not recover costs. The 10 Car. 1. st. 2. c. 17. Ir. contains a clause (s. 3.) precisely corresponding.

Counsel, attornies and clerks, assigned to persons suing in forma pauperis
11 Hen. 7. c. 12. Eng.

2 Geo. 2. c. 28. s. 8. Eng.

What persons may defend in forma pauperis.

Plaintiff suing to the king's use shall not pay costs.

24 Hen. 8. c. 8. Eng.

10 Car. 1. st. 2. c. 17. s. 3. Ir.

CHAP. XXV.

Of Proceedings in the nature of Appeals.

*Attaint granted
in plea of land
touching free-
hold.*

3 Edw. 1. c. 38.
E. & I.

1 Edw. 3. st. 1.
c. 6. E. & I.

*Attaint lies as
well upon the
principal as upon
the damages.*

3 Edw. 3. c. 7.
E. & I.

*Attaint lies in
trespass.*

28 Edw. 3. c. 8.
E. & I.

34 Edw. 3. c. 7.
E. & I.

*Attaint lies in
plea real or per-
sonal.*

14 Edw. 2.
E. & I.

*Inquest taken by
default against
first jurors.*

5 Edw. 3. c. 6.
E. & I.

*Nisi prius
granted in at-
taint.*

WITH respect to the ancient writ of *attaint*: it was provided by the 3 Edw. 1. c. 38. E. & I. that the king, of his office, should from thenceforth grant attaints upon inquests in plea of land, or of freehold, or of any thing touching freehold, when it should seem to him necessary. And by the 1 Edw. 3. st. 1. c. 6. E. & I. a writ of attaint shall be granted as well upon the principal matter as upon the damages in a writ of trespass; and the chancellor shall have power to grant such writs of attaint without conferring with the king thereon. And in all cases of attaints the justices shall not let to take the attaints for the damages not paid. The 5 Edw. 3. c. 7. E. & I. further provided, that writs of attaint shall be granted as well in pleas of trespass moved without writ, as by writ, before justices of record, if the damages adjudged exceed 40s. But by the 28 Edw. 3. c. 8. E. & I. an attaint shall be granted, as well upon a bill of trespass, as upon a writ of trespass, without having regard to the quantity of the damages. And by the 34 Edw. 3. c. 7. E. & I. an attaint shall lie as well in plea real as personal: and it shall be granted to the poor (who shall make affidavit, that they have nothing whereof to make fine, saving their countenance,) without fine, and to all others by easy fine. As to the proceedings in attaint: By the 14 Edw. 2. E. & I. in attaint, if the first jurors which shall be living appear at the first grand distress, or be returned to have nothing, by their absence there shall be no delay made of the taking of the jury. By the 5 Edw. 3. c. 6. E. & I. *nisi prius* shall be granted in attaint; but no essoin of the king's service or protection; and 5 days by the year shall be given before the justices

justices of the common bench at the least. And by the
 11 Hen. 6. c. 4. E. & I. the plaintiff in attaint shall re- 11 Hen. 6. c. 4.
E. & I.
 cover against all the jurors, tenants and defendants, the Plaintiffs in at-
taint shall reco-
ver costs and
damages.
 costs and damages which he shall sustain (by delay from
 false pleas of any of the jury, or parties, or otherwise)
 in that suit. By the 15 Hen. 6. c. 5. E. & I. no sheriff, 15 Hen. 6. c. 5.
E. & I.
 bailiff or coroner, in writs of attaint of plea of land, or
 of detinue of deeds concerning lands, of the yearly value What persons
impanelled upon
an attaint.
 of 40s. or more, or of plea personal whereof the judg-
 ment to recover extends to £40. shall impanel any but
 such as inhabit within their bailiwicks, and have free-
 hold or inheritance (*out of ancient demesne, within the
 five ports, or gavelkind) worth £20. *per ann*: and shall
 not return against them less issues than 40s. at the first
 writ of distress; 100s. at the second; and double after-
 wards; on pain to forfeit £10. to the king, and as much
 to the plaintiff: and none but persons of that worth shall
 be impanelled upon attaints, if challenge thereof be
 made by the plaintiffs. And if any of the defendants
 plead a foreign plea, and fail thereof, the justices shall Foreign plea.
 give judgment against them, as if the grand jury upon
 the articles of the writ had passed against them; howbeit,
 the rest of the defendants shall not be prejudiced there-
 by; neither shall this act extend to cities or boroughs. Exception of
cities, &c.
 By s. 2. if there shall not be in the county (under the s. 2.
 degree of a baron) enough of that worth to fill the panel,
 then shall the said officers impanel and return the most Proviso.
 sufficient persons there under that worth, upon the like
 pain. By the 23 Hen. 8. c. 3. Eng. upon every untrue 23 Hen. 8. c. 3.
Eng.
 verdict between party and party before judges of record,
 where the thing in demand extendeth to £40. and Attaint where
it lieth.
 concerneth not life, the party grieved shall have an at-
 taint against every person giving such verdict, and against
 the party that hath the judgment. And the process Process in at-
taint.
 shall be summons, resummons, and distress infinite, as well
 against the petty jury and party, as against the grand jury;
 who shall be of the accustomed number, and have lands Qualification of
jurors.
 of the yearly value of 20 marks, of freehold, out of ancient

* This exception as to gavelkind lands is done away by 13 Hen. 6. c. 2.
 E. & I.

demesne. And upon the distress, which shall be delivered of record, open proclamation shall be made in court, and the distress shall be awarded 15 days before the return thereof, and shall be made upon the land of every of the grand jury, as used in other distresses. And if the defendant, or petty jury, or some of them, appear not, the grand jury shall be taken against them that make default. And if any of the petty jury appear, the plaintiff shall assign the false serement, whereunto the petty jury shall have no other answer, (if they be the same persons, and the writ, process, return, and assignment be good,) but that they made true serement, which shall be tried by 24 of the grand jury; unless the plaintiff hath before been nonsuit, or discontinued his suit, or had judgment against the same jury for the same verdict. And the defendants may plead that they gave a true verdict, or any other matter which may bar the attain; but notwithstanding such plea, the grand jury shall inquire whether the first jury gave a true verdict, or no. By s. 3 & 4. if the petty jury be found to have given an untrue verdict, they shall each of them forfeit £20. betwixt the king and the party; and shall severally make fines at the discretion of the justices, and never after be in credence in any court. And if the plea in bar be found against him that pleadeth, the plaintiff shall have judgment to be restored to that he lost, with costs and damages: Provided (s. 5.) that outlawry in action personal, or excommunication, shall be no plea against the plaintiff in attain. In the aforesaid process such day shall be given as in dower, but no essoin or protection to be allowed; and if the grand jury appear not, so that the petty jury's verdict remains untried, the defaulters shall, upon the first distress, forfeit 20s.; upon the second 40s.; and upon every default after £5. The like penalty is also to be inflicted upon the *tales*. And the attain shall not abate so long as any two of the petty jury are alive. By s. 6. in actions for a personal thing under the value of £40. the party shall have an attain as aforesaid; except that in such case the grand juror is to have lands worth 5 marks *per ann.* out of ancient

s. 3 & 4.

Forfeiture of the
petty jury at-
tainted.

s. 5.

Outlawry or ex-
communication,
no plea.

s. 6.

Attain where
value under
£40.

ancient demesne, or to be worth 100 marks in goods ; and the forfeiture of each petty juror shall be but £5. And by s. 7. if there be not sufficient jurors within the shire where any attaint shall be taken, one *tales* shall be awarded into the shire next adjoining. An attaint shall also lie for him that is aggrieved by untrue verdict of any inheritance in descent, reversion, or remainder. And if the plaintiff be nonsuit or discontinue, he shall be fined at the discretion of the justices. By s. 8. all attaints shall be taken in the king's bench, or common place, and none in other courts ; and *nisi prius* shall be granted upon the distress at the discretion of the justices. And every of the petty jury may appear and answer by attorney. And the moieties of the forfeitures shall be levied by the king and parties, respectively, by *Ca. Sa. Fi. Fa.* or *elegit*, or action of debt, against each of the petty jury, their executors or administrators, having then sufficient goods of the testators not administered. And judgment of restitution to the plaintiff, and execution thereof, and of discharge of restitution to the tenant or defendant, shall be had as hath been used. And the nonsuit or release of one plaintiff shall not be prejudicial to the residue, but they may be summoned and severed. By s. 9. in every writ of attaint upon this act, after the *teste*, these words shall be inserted, *per statutum continuatum usque annum viciesimum tertium domini Hen. octavi, Dei gratia, Angliæ et Franciæ regis, fidei defens. et domini Hiberniæ.* By s. 11. this act shall not be prejudicial to the 11 Hen. 7. c. 21. Eng. : but all persons for an untrue verdict in London, may bring an attaint upon this or that statute at his pleasure. To this statute of Henry VIII. no act is corresponding in Ireland. But the 13 Hen. 8. c. 3. Ir. recites, that few persons within the shires where the king's laws obtained, had sufficient lands, &c. to pass in attaint, and therefore provides, that any person seised of lands, &c. of the yearly value of 10 marks, (above the charges) in fee-simple, or for term of life, copyhold, and ancient demesne, should from thenceforth pass in attaint ; and if it shall appear to the judges by examination of the jurors before them, that there were not enough of sufficient

s. 7.

Tales awarded.

Attaint for him
in reversion, &c.Nonsuit in at-
taint.

s. 8.

Attaints to be
sued in K. B. or
C. B.Attornies may
be appointed.Judgment in at-
taint.

s. 9.

Form of writ.

s. 11.

Proviso.

13 Hen. 8. c. 3.
Ir.Qualification for
jurors in attaint
in Ireland.

cient jurors within the county or franchise unreturned to make up the panel of 24 jurors, the judges shall award process to the sheriff or other officer of any county, &c. adjoining, to return as many jurors as shall need to be impanelled in said attaint.

§ 2.

Misprisions of clerks shall be amended.

14 Edw. 3. st. 1. c. 6. E. & I.

11 Hen. 4. c. 3. E. & I.

Records when amendable.

9 Hen. 5. st. 1. c. 4. E. & I.

4 Hen. 6. c. 3. E. & I.

Amendment though judgment upon verdict.

8 Hen. 6. c. 12. s. 1. E. & I.

What errors may be amended.

II. Next in order are the statutes of amendments and *jeofails*, as connected with proceedings upon *writs of error*. By the 14 Edw. 3. st. 1 c. 6. E. & I. it is enacted, that no process shall be annulled or discontinued by misprision of the clerk, in writing one syllable or letter too much or too little; but as soon as the mistake is perceived, it shall be amended in due form, without giving advantage to the party that challengeth the same. By the 11 Hen. 4. c. 3. E. & I. the justices assigned to take assizes were required to deliver into the king's treasury, the records of assizes of *novel disseisin*, *mort d'ancestor*, and of certifications, every second year, that such pleas should be determined, and judgment given thereon. And this statute provided, that such judgment when inrolled, or any thing touching such pleas, should in no wise be amended or impaired by new entering of the clerks, or by the commandment of any justice, after the term in which such judgment was given and inrolled. But by the 9 Hen. 5. st. 1. c. 4. E. & I. the justices before whom the plea or record is made, or shall be depending as well by adjournment, as by way of error, or otherwise, shall have power to amend such record and process, as well after judgment as before judgment: And by the 4 Hen. 6. c. 3. E. & I. they shall have such power whether the judgment be given upon a verdict, or upon a matter in law pleaded: provided that this statute shall not extend to Wales, nor to records or processes whereby any person shall be outlawed at any man's suit. By the 8 Hen. 6. c. 12. s. 1. E. & I. for error in any record, process, or warrant of attorney, original writ or judicial, panel or return, in any place raised or interlined, or in any addition or diminution found in any such record, &c. by writ of error or otherwise certified, no judgment nor record shall be reversed. And by s. 2. the judges shall have power to examine such

such record, &c. and to amend, in affirmance of judgments, all that seemeth to be misprision of the clerks; except appeals, indictments of treason and felonies, and outlawries of the same; and the substance of proper names, surnames, and additions, left out in original writs, and writs of *exigent* according to the 1 Hen. 5. c. 5. and in other writs containing proclamation; and if any record, &c. be certified defective, otherwise than according to the writing which thereof remaineth in the places from whence they be certified, the parties, in affirmance of the judgments, shall have advantage to allege variance betwixt the same writing and the said certificate; and, that found and certified, the same variance shall be by the judges amended according to the first writing. But by s. 4. if any such record, &c. shall be exemplified in chancery, and there inrolled, without rasing, then for error assigned in the said record, &c. contrary to the exemplification and inrolment, there shall be no judgment reversed. And the 8 Hen. 6. c. 15. E. & I. further provides, that the justices, before whom any misprision or default shall be found in any records or process depending before them, as well by way of error as otherwise, or in the returns of the same made by sheriffs, coroners, bailiffs, or any other, by misprision of the clerks, or of the sheriffs, &c. shall have power to amend such defaults and misprisions by their discretion, and by examination thereof by the justices. But this statute shall not extend to Wales, nor to outlawries of felonies and treasons. By the 32 Hen. 8. c. 30. Eng. if any issue be tried by 12 or more men, [*in any of the king's court of record,] the justices shall give judgment in the same, any mispleading, lack of colour, insufficient pleading, or *jeofaile*, any miscontinuance or discontinuance, or misconveying of process, misjoining of issue, lack of warrant of attorney for the party against whom the issue shall be tried, [†for any other default or negligence of the parties, their counsellors or attornies] notwithstanding

s. 2.

Exceptions.

s. 4.

A record exemplified, &c. in in chancery shall not be reversed.

8 Hen. 6. c. 15. E. & I.

Misprisions in records amendable though depending by way of error.

Proviso.

32 Hen. 8. c. 30. Eng.

After verdict judgment shall be given, notwithstanding any jeofails, &c.

†These words are not in the 33 Hen. 8. st. 2. c. 3. Ir.

* "In K. B. C. B. Exc. or before the justices of assize," in 33 Hen. 8. st. 2. c. 2. Ir.

ing.

s. 2 & 3.

When an attorney shall enter his warrant.

33 Hen. 8. st. 2. c. 3. Ir.

s. 4.

Proviso where the king is party.

s. 5.

And where a bill of exceptions is taken.

18 Eliz. c. 14. Eng.

Other errors and defects cured by verdict.

s. 2.

Proviso.

ing. And this act provides (s. 2 & 3.) that every attorney for any demandant or plaintiff, tenant or defendant, in any action in the said king's courts of record, shall deliver his warrant of attorney to be entered of record in the same term when the issue is entered of record,* or before, upon pain of forfeiting to the king £10. and further to suffer such imprisonment as by the court shall be thought convenient. The 33 Hen. 8. st. 2. c. 3. Ir. contains similar clauses: but further provides, (s. 4.) that this act shall not bind any judge to give judgment in any suit between the king and any of his subjects; nor shall any such erroneous judgment upon the said default, negligence, or omission, otherwise bind the king than before the making of this act: nor (by s. 5.) shall this act extend to any exception to be moved before any judge, whereupon a bill shall be sealed or refused to be sealed. The 18 Eliz. c. 14. Eng. also enacts, that if any verdict of 12 men, or more, shall be given in any action in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any default in form, or lack of form, touching false Latin, or variance from the register, or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit, or demand, or for want of any writ original or judicial, or by reason of any imperfect or insufficient return of any officer, or for want of any warrant of attorney, or by reason of any default in process upon or after any *aide prier* or *voucher*. But by s. 2. this act shall not extend to any appeal of felony or murder, nor to any indictment

* By the 4 Ann. c. 16. s. 3. Eng. the attorney for the plaintiff or demandant shall file his warrant of attorney with the proper officer, the same term he declares; and the attorney for the defendant or tenant, shall file his warrant, &c. the same term he appears; under the penalties inflicted by any former law for default of filing warrants of attorney. Which is also the provision of the 6 Ann. c. 10. Ir. But the 25 Geo. 3. c. 80. Eng. which subjects warrants of attorney to a stamp duty in England, requires a memorandum or minute thereof to be filed before any action is commenced or defended; and with respect to Ireland the 46 Geo. 3. c. 64. I. provides, that warrants of attorney shall be filed before issuing process or entering appearance by attorney.

or presentment of felony, murder, treason, [^{*}or other matter,] nor to any process upon them, nor to any action or information upon any popular or penal statute.

^{*}These words not in 10 Car. 1. st. 2. c. 12. Ir.

And by s. 3. all attornies in any court of record shall

s. 3.

deliver in the warrant of attorney, to be entered or filed as heretofore, †upon pain to forfeit £10. one moiety to the crown, and the other to such officer to whom the

When an attorney shall enter his warrant.

warrant should be delivered, and to suffer imprisonment by the discretion of the court; the said £10. to be re-

covered by action of debt, &c. And by the 21 Jac. 1. c. 13. s. 2. Eng. if any verdict of 12 men or more, shall be given

21 Jac. 1. c. 13. s. 2. Eng.

for the plaintiff or demandant, or for the defendant or tenant, bailiff in assize, vouchee, prayee in aid, or tenant by receipt, in any court of record, the judgment there-

Other errors and defects cured by verdict.

upon shall not be stayed or reversed by reason of any variance in form only, between the original writ or bill, and the declaration, plaint, or demand; or for lack of any averment of any life of any person, so as upon examination the person be proved to be in life; or by reason that the *venire facias*, *habeas corpora*, or *distringas*, be awarded to a wrong officer upon any insufficient suggestion; or that the *visne* is in some part misawarded, or sued out of more places, or fewer places, than it ought to be, so as some one place be right named; or by reason

that any of the jury is misnamed either in the †surname or addition, in the said writs, or in any return upon them, so as upon examination it be proved that it was

†"name" here added in 10 Car. 1. st. 2. c. 12. Ir.

the same man that was meant; or by reason that there is no return upon any of the said writs, so as a panel of the names of the jurors be returned and annexed to the writ; or for that the sheriff's name, or other officer's name having the return, is not set to the return, so as upon examination it be proved that the writ was returned by the sheriff, &c.; or by reason that the plaintiff in an *ejectione firmæ*, or in any personal action, being an infant under the age of 21 years, did appear by attorney, and the verdict pass for him. But by s. 3. this act shall not

s. 3.

extend to any appeal of felony or murder, nor to any indictment or presentment of felony, murder, or treason,

Proviso.

nor

† vide note to the preceding page.

nor to any action or information upon any popular or
 10 Car. 1. st. 2. c. 12. Ir. penal statute. The 10 Car 1. st. 2. c. 12. Ir has incor-
 16 & 17 Car. 2. c. 8. Eng. By the 16 & 17 Car. 2. c. 8. Eng. if any verdict be given
 c. 8. Eng. in any action or suit in the king's courts of record at
 [*Westminster, or in the courts of record in the counties
 palatine, or in the courts of great sessions in Wales,]
 judgment shall not be stayed or reversed for default in
 form or lack of form; or by reason that there are not
 pledges, or but one pledge, to prosecute, returned
 upon the original writ; or because the name of the
 sheriff is not returned upon such original writ; or for
 default of entering pledges upon any bill or declaration;
 or for default of alleging the bringing into court of any
 bond, bill, indenture, or other deed, mentioned in the
 declaration or other pleading; or for default of allegation
 of bringing into court of letters testamentary, or letters
 of administration; or by reason of the omission of *vi et*
armis, or *contra pacem*; or the mistaking of the christian
 name or surname of the plaintiff or defendant, deman-
 dant or tenant, sums of money, day, month, or year,
 by the clerk in any bill, declaration, or pleading, where
 the right name, &c. in any record preceding, or in the
 same record, are once rightly alleged, whereunto the
 plaintiff might have demurred and shewn the same for
 cause; nor for want of the averment of *hoc paratus est*
verificare, or *hoc paratus est verificare per recordum*;
 or for not alleging *prout patet per recordum*; or for that
 there is no right venue, so as the cause were tried by a
 jury of the county or place where the action is laid; nor
 any judgment after verdict, confession by *cognovit*
actionem, or *relicta verificatione*, shall be reversed for
 want of *misericordia*, or *capiatur*; or that a *capiatur* is
 entered for a *misericordia*, or a *misericordia* for a *capiatur*;
 nor for that *ideo concessum est per curiam* is entered
 for *ideo consideratum est per curiam*; nor for that the
 increase of costs after a verdict in any action, or upon
 a nonsuit in replevin, are not entered to be at the request
 of the party for whom the judgment is given; nor that the
 costs in any judgment are not entered to be by consent
 of the plaintiff; but all such omissions, variances, de-
 fects

fects, and other matters of the like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended by the courts where such judgments are given, or whereunto the record is removed by writ of error. But by s. 2. this act shall not extend to any appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon them, nor to any action upon any penal statute, other than concerning subsidies of tonnage and poundage. The 17 & 18 Car. 2.

s. 2.

Proviso.

c. 12. Ir. contains corresponding provisions. The 13 Car. 2. st 2. c. 2. s. 6. Eng. provides, that in actions of debt, and other personal actions, and in actions of *ejectione firma*, by original writ, in either of the courts of K. B. or C. B., after issue joined, and after judgment obtained, there shall not need to be 15 days between the *teste* and the return of any writ of *venire facias*, *habeas corpora juratorum*, or *distringas juratores*, *fieri facias*, or *capias ad satisfaciendum*. But by s. 7. this act shall not extend to any writ of *capias ad satisfaciendum* whereon a writ of *exigent* after judgment is to be awarded, nor to *capias ad satisfaciendum* against the defendant in order to make any bail

17 & 18 Car. 2.
c. 12. Ir.*Went of 15
days between
teste and return
of writs cured.*

s. 7.

Proviso.

liable: which provisions are also contained in the 7 W. 3. c. 25. Ir. And by the 5 Geo. 1. c. 13. s. 1. Eng. where any verdict shall be given in any court of record, in England or Wales, the judgment shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ original or judicial, or for any variance in such writs from the declaration or other proceedings. Provided (s. 2.) this nothing in this act shall extend to any appeal of felony or murder, or to any process upon any indictment, &c. for any offence or misdemeanor. A corresponding provision is contained in

7 W. 3. c. 25.
s. 5 & 6. Ir.5 Geo. 1. c. 13.
s. 1. Eng.*After verdict
any fault in bill,
writ, &c. or va-
riance between
writ, &c. and
declaration, cu-
red.*

s. 2.

Proviso.

the 6 Geo. 1. c. 6. Ir. It is one of the provisions of the 4 Ann. c. 16. Eng. that all the statutes of *jeofails* shall be extended to judgments entered upon confession, *nihil dicit*, or *non sum informatus*, in any court of record; and no such judgment shall be reversed, nor any judgment upon any writ of inquiry of damages executed thereon be stayed or reversed, for any thing

6 Geo. 1. c. 6.
s. 1 & 2. Ir.4 Ann. c. 16.
s. 2. Eng.*Statutes of jeo-
fails extended
to judgments
upon nihil dicit.*

which

s. 25.

Statutes of jeofails to extend to all courts of record.

6 Ann. c. 10.
s. 2. Ir.

Costs awarded to plaintiff, where defendant sueth a writ of error.

3 Hen. 7. c. 10.
E. & I.

19 Hen. 7. c. 20.
Eng.

3 Jac. 1. c. 8.
Eng.

10 Car. 1. st. 3.
c. 8. Ir.

Recognizance to be entered into upon bringing writ of error in debt.

*“In Ch.
K. B. C. B. or
Exc.” by 10
Car. 1. st. 3.
c. 8. Ir.

which would have been aided by the statutes of *jeofails*, in case a verdict had been given in the action, so as there be an original writ or bill, and warrants of attorney duly filed. And it is provided (s. 25.) that this act, and all the statutes of *jeofails*, shall extend to all courts of record in the counties palatine, and Wales, and all other courts of record. The 6 Ann. c. 10. Ir. contains similar provisions.

To avoid unnecessary delays of executions it was provided by the 3 Hen. 7. c. 10. E. & I. (which is confirmed by the 19 Hen. 7. c. 20. Eng.) that where a plaintiff or demandant hath judgment to recover, if any defendant or tenant, or other person bound by said judgment, sue, afore execution had, any writ of error to reverse such judgment, in delay of execution, then if said judgment be affirmed, or said writ of error be discontinued in default of the party, or the person that sueth such writ of error be nonsuited, the person against whom the writ of error is sued, shall recover his costs and damages for his delay, by the discretion of the justice afore whom the writ of error is sued. The 3 Jac. 1. c. 8. Eng. provides, that no execution shall be stayed or delayed, upon or by any writ of error, or *supersedeas* thereupon, for the reversing of any judgment in any action or bill of debt, upon any single bond, or upon any obligation with condition for the payment of money only, or upon any action or bill of debt for rent, or upon any contract, sued [*in any court of record at Westminster, or in the counties palatine, or courts of great sessions in Wales;] unless the person in whose name such writ of error shall be brought, with 2 sureties, such as the court wherein the judgment is given shall allow of, shall first be bound unto the party for whom judgment is given, by recognizance in double the sum recovered, to be acknowledged in the same court, to prosecute the writ of error with effect, and also to pay (if the judgment be affirmed) all debts, damages and costs, adjudged upon the former judgment, and all costs and damages to be awarded for delay of execution: Which is also the provision of the 10 Car. 1. st. 3. c. 8. Ir. And by the 13 Car. 2. st. 2. c. 2. s. 9, Eng. no execution shall

shall be stayed in the said courts (*mentioned in 13 Car. 2. st. 2. c. 2. s. 9. Eng. the 3. Jac. 1. c. 8. *supra*) by writ of error, or *supersedeas* thereupon, after verdict and judgment, in any action of debt [†upon the 2 & 3 Edw. 6. c. 13. for not setting forth of tithes] nor in any action on the case upon any promise for payment of money, *traver*, action of covenant, detinue and trespass; unless such recognizance as by the former act is directed, be first acknowledged. And by s. 10. if any person shall sue any writ of error, for reversal of any judgment given after verdict in any the courts aforesaid, and the judgment be affirmed, such person shall pay the defendant in error double his costs. But by s. 11. this act shall not extend to any action popular, nor to any action upon any penal law, [except debt for not setting out tithes,] nor to any indictment, presentment, inquisition, information or appeal. The 7 W. 3. c. 25. Ir. has followed this statute with such deviation as is noted in the margin. And the 16 & 17 Car. 2. c. 8. s. 3. Eng. further provides, that no execution shall be stayed in any of the courts of record [†at Westminster, or in the counties palatine, or in the courts of great sessions in Wales,] by writ of error or *supersedeas* thereupon, after verdict and judgment thereupon, in any action personal, unless a recognizance with condition according to the 3 Jac. 1. c. 8. *supra*, be first acknowledged. And in writs of error upon any judgment after verdict in dower, or in *ejectione firmæ*, no execution shall be stayed, unless the plaintiff in error shall be bound unto the plaintiff in dower or *ejectione firmæ*, in such sum as the court to which such writ of error shall be directed shall think fit, with condition, that if the judgment be affirmed, or the writ of error discontinued in default of the plaintiff, or that the plaintiff be nonsuit in such writs of error, that then the plaintiff shall pay such costs, damages, and sums of money, as shall be awarded upon such judgment affirmed, discontinuance or nonsuit had.

To what actions the 3 Jac. 1. shall extend.

† These words not in 7. W. 3. c. 25. Ir.

s. 10.

Double costs recovered if judgment affirmed.

s. 11.

Provide.

7 W. 3. c. 25. s. 9. 10. 11. Ir.

16 & 17 Car. 2. c. 8. s. 3. Eng.

Recognizance required upon bringing writ of error in other actions.

+ "Courts of record at Dublin" in 17 & 18 Car. 2. c. 12. Ir.

* The 7 W. 3. c. 25. s. 9. Ir. here refers to the 10 Car. 1. st. 3. c. 8. Ir.

And

s. 4. And by s. 4. the court wherein such execution ought to be granted upon such affirmation, discontinuance, or nonsuit, shall issue a writ to inquire as well of the mesne profits, as of the damages by any waste committed, after the first judgment in dower or *ejectione firmæ*; and upon the return thereof judgment shall be given, and execution awarded, for such mesne profits and damages, and also for costs. Provided (s. 5.) that this act shall not extend to any writ of error to be brought by any executor or administrator, nor unto any action popular, nor unto any other action upon any penal law, [*except for not setting forth of tithes] nor to any indictment, presentment, information or appeal. The 17 & 18 Car. 2. c. 12. Ir. contains similar clauses. And the 4 Ann. c. 16. s. 25. Eng. further provides, that on the quashing any writ of error for variance from the original record, or other defect, the defendant in error shall recover his costs, as if the judgment had been affirmed: which clause is also contained in the 6. Ann. c. 10. Ir. But the 5 Geo. 1. c. 13. s. 1. Eng. (*ante* page 285) provides, that all writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended and made agreeable to such record †by the respective courts where such writs shall be returnable. And the 6. Geo. 1. c. 6. Ir. in like manner authorizes the amendment of writs of error. The 8 Geo. 1. c. 2. s. 3. Ir. provides, that notwithstanding any writ of error to reverse any judgment obtained in any ejectment brought by virtue of this act, or 4 Geo. 1. c. 5. Ir. execution shall issue, &c. unless the party that brings such writ of error shall, within 4 days after such writ of error shall be tendered, pay into the court, where such judgment was obtained, all such rent as shall appear to be due, together with full costs of suit; which sum the judges of the court where the judgment was obtained, shall order to be paid to the lessor in ejectment, upon his giving sufficient security to repay the same in case the said judgment shall be reversed.

Proviso touching judgment in dower, and ejectione firmæ.

Certain actions excepted.

*These words not in 17 & 18 Car. 2. c. 12. Ir.

17 & 18 Car. 2. c. 12. Ir.

4 Ann. c. 16. s. 25. Eng.

6 Ann. c. 10. s. 22. Ir.

On quashing writ of error defendant to have costs.

5. Geo. 1. c. 13. s. 1. Eng.

Writ of error may be amended.

6 Geo. 1. c. 6. s. 1. Ir.

8 Geo. 1. c. 2. s. 3. Ir.

Execution in ejectment for non-payment of rent when stayed by error.

† "Or the transcript thereof" here added in 6 Geo. 1. c. 6. Ir.

For the reformation of errors in fines and recoveries, the 23 Eliz. c. 3. s. 2. Eng. enacts, that no fine, proclamations upon fines, or common recovery, shall be reversed or reversible by any writ of error for false Latin, rasure, interlining, misentering of any warrant of attorney, or of any proclamation, mis-returning or not-returning of the sheriff, or other want of form in words and not in substance. And the 10 Car. 1. st. 2. c. 10. Ir. contains a corresponding provision.

For what errors fines and recoveries are not reversible.

23 Eliz. c. 3. s. 2. Eng.

10 Car. 1. st. 2. c. 10. Ir.

With respect to the limitation prescribed for suing out writs of error: the 10 & 11 W. 3. c. 14. Eng. enacts, that no fine or common recovery [*nor any judgment in any real or personal action,] shall be reversed or avoided for error, unless the writ of error, or suit for the reversing such fine, recovery, or judgment, be brought and prosecuted with effect within [†20 years] after such fine levied, or such recovery suffered, [*or judgment signed or entered of record.] But by s. 2. if any person entitled to such writ of error shall, at the time of such title accrued, be within the age of 21 years, or covert, *non compos mentis*, imprisoned, or beyond the seas, such person, his heirs, executors, or administrators, may bring their writ of error within 5 years after full age, discoveriture, coming of sound mind, enlargement out of prison, or returning from beyond the seas, or death. The 4 Geo. 1. c. 10. Ir. has followed this statute with such deviations as are noted in the margin: and with respect to judgments in real or personal actions (to which the 4 Geo. 1. c. 10. did not extend) the 6 Geo. 1. c. 6. Ir. contains provisions precisely corresponding to those of the 10 & 11 W. 3. c. 14. *supra*.

Limitation for writs of error.

10 & 11. W. 3. c. 14. Eng.

*These words not in 4 Geo. 1. c. 10. Ir.

s. 2.

Proviso.

4 Geo. 1. c. 10. Ir.

6 Geo. 1. c. 6. s. 3 & 4. Ir.

The several statutes of amendment and *jeofails*, &c. are expressly extended to inferior courts of record in Ireland by the 9 W. 3. c. 13. Ir. which enacts (s. 5.) that the 10 Car. 1. st. 2. c. 11. Ir. 10 Car. 1. st. 2. c. 12. Ir.

Statutes of jeofails, &c. extended to inferior courts.

9 W. 3. c. 13. s. 1. Ir.

† “The limitation by the 4 Geo. 1. c. 10. Ir. is “10 years.” And it is to be observed that by the 32 Hen. 8. c. 2. s. 5. Eng. *scire facias* upon fines or recoveries is to be sued within 50 years after the title accrued. But by the 10 Car. 1. st. 2. c. 6. s. 5. Ir. the limitation for such *scire facias* is “20 years after title accrued.”

33 Hen. 8. st. 2. c. 3. Ir. 10 Car. 1. st. 3. c. 8. Ir. and 17&18 Car. 2. c. 12. Ir. (which are stated in this and other chapters of this digest) shall be of force and observed in all inferior courts of record in this kingdom. And by s. 6. provides, that in county courts, manor courts, and other inferior courts, which have power to try actions under 40s. the proceedings and pleadings may be in English, and shall not for that or other defect in form be quashed or vacated, if the same be removed by writ of false judgment, or otherwise, into any of his majesty's courts of record. No act in England has expressly extended the provisions of the statutes of amendment and *jeofails* to inferior courts. The 19 Geo. 3. c. 70. s. 5. Eng. provides, that no execution shall be stayed or delayed upon or by any writ of error, or *supersedeas* thereon, to be sued for the reversing of any judgment given in any inferior court of record, where the damages are under [*£10], unless the person in whose name such writ of error shall be brought, with 2 sureties such as the court wherein such judgment shall be given shall allow of, shall, before such stay made, or *supersedeas* awarded, be bound unto the party for whom such judgment shall be given, by recognizance (to be acknowledged in the same court) in double the sum adjudged, to prosecute the said writ of error with effect, and also to pay (if the said judgment be affirmed, or the said writ of error be non-pros'd) the debt, damages, and costs adjudged, and all costs and damages to be awarded for the delaying of execution. The 19 & 20 Geo. 3. c. 38. Ir. contains a similar clause.

None but the king shall hold plea of false judgment.

52 Hen. 3. c. 19. E. & I.

1 Edw. 3. st. 1. c. 4. E. & I.

Trial of averment in writ of false judgment.

With respect to the writ of *false judgment* which lies to amend the errors of base courts, not of record: The 52 Hen. 3. c. 19. E. & I. enacts, that none (except the king) shall hold plea of false judgment, given in the court of his tenants. And by the 1 Edw. 3. st. 1. c. 4. E. & I. when any record cometh into the king's court by writ of false judgment, where the party allegeth that the record is otherwise than the court doth record the same, the averment shall be received of the country, and of them which were present in the court when the record was made

made, if they come with others of the country by the sheriff's return; and if they come not, the inquest shall be taken by the country.

CHAP. XXVI.

Of Execution.

WITH respect to the writ of *capias ad satisfaciendum*: § 1.

It is declared and enacted by the 21 Jac. 1. c. 24. Eng. that the party at whose suit any person shall stand charged in execution for any debtor damages recovered, his executors or administrators, may, after the death of the person so charged, and dying in execution, have new execution

A new execution may be awarded against the lands, &c. of him that dies in execution.

21 Jac. 1. c. 24. s. 1 & 2. Eng.

against the lands and tenements, goods and chattels, of the person so deceased, as they might have had if such person had never been taken in execution. But by s. 3. this act shall not give liberty to any person at whose suit such person shall be in execution, and die in execution, to have any new execution against any lands, &c. of such party dying in execution, which shall after the said judgment be by him sold, *bona fide*, for the payment of any of his creditors, and the money which shall be paid for the lands so sold, either paid or secured to any of his creditors in discharge of their debts. The

s. 3.

Proviso.

10 Car. 1. st. 3. c. 9. Ir. is the corresponding Irish statute. And the 10 & 11 Car. 1. c. 12. Ir. has followed the 2 Jac. 1. c. 13. Eng. in declaring or enacting, that where any person being arrested in execution, shall by

10 Car. 1. st. 3. c. 9. Ir.

2 Jac. 1. c. 13. Eng.

10 & 11. Car. 1. c. 12. Ir.

privilege of either of the houses of parliament be set at liberty; the party at whose suit such writ of execution was pursued, his executors or administrators, after such time as the privilege of that session of parliament, in which such privilege shall be so granted, shall cease, may sue forth and execute a new writ of execution, as if no such former execution had been taken or served:

New execution may issue against person discharged by privilege.

s. 2.

Proviso.

33 Geo. 3. c. 42.
s. 28. Ir.

New execution
may issue
against estate of
debtor not de-
tained by Ca.
Sa. for 6 months.

35 Geo. 3. c. 30.
s. 31. Ir.

Ca. Sa. exe-
cution does not
discharge debtor
from liability to
other executions.

† "Creditor"
is the word in
the statute as
printed.

Penalty of the
warden of the
fleet, if he suf-
fer prisoner by
judgment to
go at large.

1 Ric. 2. c. 12.
E. & I.

and no sheriff, or officer, from whose custody any person so arrested in execution shall be delivered by such privilege, shall be charged with any action for delivering such privileged person. Provided (s. 2.) that this act shall not diminish any punishment by censure in parliament for any such arrest. But the following provision of the 33 Geo. 3. c. 42. Ir.* is peculiar to the law of Ireland: This statute provides (s. 28.) that every person who shall have charged or detained his debtor on a *capias ad satisfaciendum*, or otherwise, shall have the same execution for the same debt against the lands and goods or other estate of his debtor, by *elegit*, *fieri facias*, or otherwise, as if the creditor had not so imprisoned or detained his said debtor in prison, provided that such debtor shall not have been so charged or detained in execution for the space of 6 months after judgment obtained against him. And the 35 Geo. 3. c. 30. s. 31. Ir.* still more generally provides, that every person who shall have charged or detained his debtor on a *capias ad satisfaciendum*, or otherwise, shall have the same execution for the same debt, against the lands or goods or other estate of his debtor, by *elegit*, *fieri facias*, or otherwise, as if said creditor had not so charged or detained his [†debtor] in prison.

To prevent the escape of prisoners taken in execution, the 1 Ric. 2. c. 12. E. & I. enacts, that no warden of the fleet shall suffer any prisoner there being by judgment to go out of prison by bail, nor by baston, without making gree to the parties of that whereof they were judged, unless it be by writ or other command of the king; upon pain to lose his office. And if such warden be attainted, that he hath suffered such prisoner to go at large, the plaintiffs shall have their recovery against the warden by writ of debt. And if any at the suit of the party judged to another prison for debt, trespass, or other quarrel, will confess himself by a feigned cause debtor to the king, and by that means be judged to the prison of the fleet,

* These clauses of the 33 Geo. 3. c. 42. and 35 Geo. 3. c. 30. seem to be meant as perpetual or permanent provisions, though the other clauses of these Insolvent acts were of a temporary nature.

the recognizance shall be received; and if he be not debtor to the king of record, his body shall be remanded to the prison where he was before, till he hath made gree to the party, and then he shall be sent again to the fleet till he hath made gree to the king of his recognizance.

And by the 8 & 9 W. 3. c. 27. s. 1. Eng. all prisoners either upon contempt or mesne process, or in execution, who shall be committed to the custody of the marshal of the king's bench, or warden of the fleet, shall be detained within the said prisons, or the rules of the same,

8 & 9. W. 3.
c. 27. s. 1 Eng.

*Prisoners in the
king's bench or
fleet, to be de-
tained there or
in the rules.*

until they be discharged by due course of law; and if the said marshal or warden, or any other keeper of any prison, shall suffer any prisoner to go at large out of the rules, (except by *habeas corpus*, or rule of court, which rule shall not be granted but by motion made, or petition read in court) every such being out of the rules shall be judged an escape. And by s. 4. if any marshal,

*Suffering them
to go at large
without habeas
corpus, an
escape.*

s. 4.

warden, or their deputies, or any keeper of any prison, shall take any reward or security to procure, assist, connive at, or permit any escape, and shall be convicted, such marshal, &c. shall forfeit £500. and his office, and be for ever incapable of executing any such office. Provided (s. 5.) that this act shall not make void

*Penalty for
taking reward
for prisoners
escape.*

s. 5.

such securities as shall be given by any prisoners for their lodgings without the prisons within the rules, so as such securities be not taken for the enlargement of any prisoner beyond the rules. By s. 6. no retaking on fresh pursuit shall be given in evidence, on the trial of any

*Proviso as to
payment for
lodgings.*

s. 6.

issue in any action of escape, against the marshal, or warden, &c. or other keeper of any prison, unless the same be specially pleaded; nor shall any special plea be received, unless oath be made in writing by the marshal, &c. and filed, that the prisoner did without his consent, privity, or knowledge, make such escape; and if such affidavit shall appear to be false, and the marshal, &c. be convicted thereof, such marshal, &c. shall forfeit

*Retaking on
fresh pursuit to
be specially
pleaded.*

*Special plea to
be verified on
oath.*

s. 7.

£500. But this act provides (s. 7.) that if any prisoner committed in execution shall escape, the creditor, at whose suit such prisoner was charged in execution, may retake such prisoner by any new *capias*, or *capias ad satisfaciendum*, or sue forth any other kind of execution,

*New execution
may be issued
against any
prisoner who
escapes.*

as

s. 8.
*Keeper refusing
to shew prisoner,
deemed an
escape.*

s. 9.
*Penalty on
keepers refusing
to give a note
whether a person
be prisoner or
not.*

s. 16.
*Penalties how
disposed of.*

s. 17.
*This act con-
strued benefi-
cially, &c.*

*Sheriff not lia-
ble for rescue
upon removal
of prisoner by
habeas corpus.
21 & 22 Geo. 3.
c. 34. Ir.*

s. 2.
Proviso.

as if the body of such prisoner had never been in execu-
tion. And by s. 8. if the marshal, &c. or keeper of any
prison, shall, after one day's notice in writing, refuse to
shew any prisoner in execution, to the creditor at whose
suit the prisoner was charged, or his attorney, such re-
fusal shall be adjudged an escape. And by s. 9. if any
person desiring to charge any person with any action or
execution, shall desire to be informed by the marshal
or other keeper of any prison, whether such person be a
prisoner in his custody or not, the said marshal, &c.
shall give a note thereof to the person requesting, or his
attorney, upon demand at his office, or in default there-
of shall forfeit £50; and if such marshal, &c. give a
note that such person is an actual prisoner in his cus-
tody, such note shall be sufficient evidence that such
person was a prisoner. By s. 16. the penalties in this
act, not particularly disposed of, shall go, one half to
his majesty, and the other half to him that will sue for
the same. And by s. 17. this act shall be construed most
beneficially for preventing the mischiefs provided against.
Several clauses of this statute concern, peculiarly, the
marshal of the king's bench prison, and warden of the
fleet, and relate to other particular persons and places,
and are, therefore, omitted. The 1 Ann. st. 2. c. 6.
Eng. and 5 Ann. c. 9. s. 1. 2. & 3. Eng. also relate, pe-
culiarly, to the king's bench and fleet prisons. The
8 Ann. c. 7. Ir. (which relates to the prison of the
marshalsea of the Four-Courts, Dublin) is taken from the
1 Ann. st. 2. c. 6. Eng.

The following provisions of the 21 & 22 Geo. 3.
c. 34. Ir. are peculiar to the law of Ireland: this statute
enacts, that where any prisoner in execution for debt
shall be rescued on his removal by virtue of any *habeas
corpus*, and any action shall be brought for the escape of
such prisoner, and it shall be proved on the trial, that
such rescue was without any neglect or default in the
sheriff, or in the person having charge of such prisoner,
in such case it shall be lawful for the jury, if they think
proper, to find a verdict for the defendant in such action,
but without costs. Provided (s. 2.) that the burden of
proof

proof shall lie upon such defendant. But by s. 3. nothing herein shall extend to any person in his removal from any gaol in the city of Dublin, or county of Dublin, nor to any rescue within the bailiwick of any sheriff having the custody of such prisoner. By s. 4. any creditor may issue any new execution, writ, or process, against any prisoner so escaping.

s. 3.

Exception.

s. 4.

New execution
may issue
against person
so escaping.

For the relief of debtors with respect to the imprisonment of their persons, and to oblige debtors who shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in this act, to make discovery of, and deliver upon oath, their estates for their creditors' benefit; the 32 Geo. 2. c. 28. s. 13. Eng. as amended by the 33 Geo. 3. c. 5. Eng. provides, that if any person charged in execution* for any sum not exceeding [†£300. or on which execution there remains due (as shall be made appear by oath) a sum not amounting to above £300.] be minded to deliver up to his creditors, who shall so charge him, all his effects; such prisoner, before the end of the first term next after he is so charged, may exhibit a petition to any court of law from whence the process issued, or to the court into which such prisoner is removed by *habeas corpus*, or charged in custody, certifying the cause of his imprisonment; and not only setting forth an account of all the real and personal estate which he, or any person in trust for him, is entitled to at the time of his petitioning, and of all incumbrances affecting such estate, but also an account of all the real and personal estate which such prisoner, or any person in trust for him, was entitled to at the time of his first imprisonment in the action in which he is so charged, either in possession or expectancy, to the best of his belief, and so far as his knowledge extends; and an account of all securities wherein any part of his estates consists, and of all the deeds

Debtor charged
in execution for
any sum not ex-
ceeding £300.
may be dis-
charged by pe-
tition to the
court.

32 Geo. 2. c. 28.

s. 13. Eng.

(33 Geo. 3. c. 5.
Eng.)

Petition what to
contain.

* The 37 Geo. 3. c. 49. Ir. here, and throughout, adds, "or imprisoned under meane process."

† The sum was extended from £100. to £200. by the 26 Geo. 3. c. 44. Eng. and to £300. by the 33 Geo. 3. c. 5. Eng. But the sum limited in the 37 Geo. 3. c. 49. Ir. is £200.

*Notice required
to be given of
such petition.*

*"15 days" by
the 37 Geo. 3.
c. 49. Ir.

*Affidavit also
required.*

*Form of oath
verifying peti-
tion and sche-
dule.*

† "person"
here added in
37 Geo. 3. c. 49.
Ir.

deeds and papers concerning the same; and the names and places of abode of the witnesses to all securities, bonds, or notes, and where they are to be met with, so far as his knowledge extends. And before such petition be received, such prisoner shall cause to be given or left, for all creditors at whose suit he so stands charged, or their executors or administrators, and at their usual place of abode, (or for their attorney last employed in such action, in case any creditor, &c. cannot be met with) [*14 days] at least before such petition be presented, a notice in writing signed with the name or mark of such prisoner, importing that such prisoner intends to petition the court, and setting forth a copy of the schedule of his estate, which he intends to deliver into court, except the necessary wearing apparel and bedding of the prisoner and his family, and the tools of his trade, not exceeding £10. in value. And an affidavit of the due service of such notice shall be delivered with such petition, and read in court. And if such court be satisfied of the regularity of such notice, such petition shall be received; and such court shall, by rule, cause the prisoner, so petitioning, to be brought up to such court, on some day in such rule specified, and the creditors at whose suit he so stands charged, or their executors or administrators, to be summoned to appear personally, or by attorney, at some day specified in such rule; and if any creditors so summoned, or their executors or administrators, so appear, or if they neglect to appear, upon affidavit of the service of such rule on them, or their attorney, if they cannot be met with, such court shall, in a summary way, examine into such petition, and hear what shall be alleged for or against the discharge of such prisoner; and administer to the prisoner an oath to the effect following, *viz.* " I *A. B.* do swear in the presence of
" Almighty God, that the account by me set forth in
" my petition presented to this honourable court, doth
" contain a full and true account of the real and personal
" estate, debts, credits, and effects whatsoever, which I,
" or any† in trust for me, at the time of my first imprison-
" ment in this action, or at any time since, had, or was
" in

“ in any respect entitled to, in possession, reversion,
 “ or remainder, (except the wearing apparel and bed-
 “ ding of or for me and my family, and the tools or
 “ instruments of my trade or calling, not exceeding
 “ £10. in value in the whole;) and also an account
 “ how much of my real and personal estate, debts, credits,
 “ or effects, hath since been disposed of, released or
 “ discharged, and how, to whom, and on what con-
 “ sideration, and for what purpose, and how much
 “ thereof I, or any person or persons in trust for me,
 “ have, or at the time of my presenting my said petition
 “ to this honourable court had, or which I am or was,
 “ or any person in trust for me, or for my use,
 “ is, any ways interested in, or entitled to, in pos-
 “ session, reversion, remainder, or expectancy; and
 “ also a true account of all deeds, writings, books,
 “ papers, securities, bonds, and notes, relating thereto,
 “ and where the same respectively now are, to the best
 “ of my knowledge and belief, and what charges are
 “ now affecting the real estate I am now seised of, or
 “ entitled to (*if such prisoner be then seised of any real*
 “ *estate*) and that I have not at any time before or since
 “ my imprisonment, directly or indirectly, sold, leased,
 “ assigned, mortgaged, pawned, or otherwise disposed
 “ of, or made over in trust for myself, or otherwise than
 “ is mentioned in such account, any part of my messua-
 “ ges, lands, tenements, estates, goods, stock, money,
 “ debts, or other real or personal estate, whereby to
 “ have or [*accept] any benefit, advantage, or profit, *
 “ to myself or my family, or with any view, design, or ^{“ Expect” in}
 “ intent to deceive, injure, or defraud any of my ^{37 Geo. 3.c.49.}
 “ creditors to whom I am indebted. So help me God.” ^{r.}

And in case any prisoner as aforesaid in court take the
 said oath, such court may then order the lands and effects
 contained in such account, or so much as may satisfy
 the debts wherewith such prisoner so stands charged,
 and the fees due to the keeper of the prison, to be,
 by a short indorsement on the back of the petition sign-
 ed by the prisoner, assigned to the creditors who have
 so charged such prisoner, their heirs, executors, admin-
 istrators and assigns, for the benefit of them who have

*Assignment of
 prisoners effects
 to be thereupon
 made.*

Effect of such assignment.

Prisoner discharged.

**¹² Or mesne process¹⁷ in 37 Geo. 3.c.49. &c.*

Prisoners effects divided amongst creditors.

Prisoner remanded at the instance of any creditor.

so charged him, subject to all prior incumbrances; and the estate belonging to any such prisoner, shall, by such assignment, be vested in the persons to whom such assignment is made, according to the interest such prisoner had therein; and the creditors to whom such assignment is made, shall take possession of, and sue in their names for the recovery thereof, as assignees of commissioners of bankrupts may sue for the recovery of the effects of bankrupts; and no release of such prisoner, his executors or administrators, or any trustee for him, subsequent to such assignment, shall be pleadable in bar of any action commenced by such assignees of such prisoner: and upon every such assignment being executed by such prisoner, he shall be discharged out of custody by rule of court; and such rule being produced to, and a copy thereof left with such sheriff or keeper of any prison, shall be a warrant to him to discharge such prisoner, if charged in execution,* or detained for the causes mentioned in his petition, and no other. And every such sheriff or keeper is, on having such order produced to him, and a copy thereof left with him, to discharge forthwith every prisoner ordered to be so discharged, without taking any fee or detaining him in respect of any demand of chamber-rent, or otherwise; or for any fees due to such sheriff, or keeper, or any employed under him. And no sheriff, &c. shall be liable to an action of escape, or other suit or information, for what he shall do in pursuance of this act. And the persons to whom the effects of such prisoner shall be assigned, shall, with all convenient speed, sell the estates and effects of such prisoner, and divide the produce amongst the creditors who have so charged such prisoner, before the time of his petition, in proportion to their debts. But in case the persons at whose suit such prisoner so stood charged, be not satisfied with the truth of such prisoner's oath, and, either personally, or by attorney, (if they cannot personally attend, and proof be made thereof to the satisfaction of such court,) desire further time to inform themselves of the matters therein, such court may remand such prisoner, and direct him, and the persons dissatisfied with such oath, to appear in person,

person, or by attorney, on some other day appointed by such court, at furthest within the first week of the term next following the time of such examination, but sooner if such court think fit. And all objections to the insufficiency in form against any prisoner's schedule of his effects, shall be only made the first time such prisoner is brought up. And if at such second day the creditors dissatisfied with such oath make default in appearing; or appear and be unable to discover any effects of the prisoner omitted in the account set forth in his petition; then such court shall by rule immediately cause the prisoner to be discharged upon such prisoner's executing such assignment as before directed; unless such creditor who so charged such prisoner, his executors or administrators, insist upon such prisoner being detained, and agree by writing signed with their names or marks, (or under the hand of their attorney, in case such creditor, &c. be out of England) to pay weekly a sum [*not exceeding 2s. 4d.] as such court thinks fit, unto the said prisoner, to be paid every Monday in every week, so long as such prisoner continues in prison in execution† at the suit of any such creditor; and in such case such prisoner shall be remanded to prison: but if any failure at any time be made in the payment of the weekly sum, such prisoner, upon application, in term time, to the court where the suit was commenced, &c. or in the prison of which such prisoner stands committed on any *habeas corpus*, or in vacation time to the judge of such court, may by order of such court or judge, be discharged, proof being made on oath of the non-payment for any week of the sum ordered; but every such prisoner before he be discharged, shall execute an assignment of his effects in manner before directed. And if any prisoner petitioning for his discharge under this act, refuse to take the oath before directed, or be detected before such

*Proceeding when
prisoner brought
up the second
time.*

*Weekly allowance
to be paid
by creditor, or
prisoner dis-
charged.*

* "Not exceeding 3s. 6d." by the 37 Geo. 3. c. 86. s. 3. Eng.

† "Or under mesne process" added in 37 Geo. 3. c. 49. Ir.

s. 14.

*Where more
creditors than
one insist on
prisoner's deten-
tion, what
weekly allow-
ance to be paid.*

s. 15.

*Proceeding
where prisoners
charged in exe-
cution in gaols
distant from
Westminster.*

§ This clause
not in 37 Geo.
3. c. 49. Ir.

court or judge of falsity therein, or refuse to execute such assignment of his effects, he shall be remanded and continue in execution. By s. 14. when more creditors than one charge any prisoner in execution,* and desire to have such prisoner detained, each creditor shall only pay such weekly sum [†not exceeding 1s. 6d. a week,] on every Monday, as the court at the time of his being remanded shall direct. And by s. 15. where any prisoner is charged in execution in any county gaol, or in any other prison [‡above 20 miles from Westminster Hall, or the court out of which such execution issued,] then, upon petition to the court from whence such execution* issued, or in the prison of which such prisoner so stands charged, in like form as the petitions before mentioned, and on affidavit to the purport before directed, made and left with such petition, such court (being satisfied with the truth of such affidavit) is to make a rule, to cause the prisoner so petitioning to be brought to the next assizes for the county or place where he is imprisoned, [§if the same be within England; and if within the principality of Wales, or county palatine of Chester, then to the next great sessions for the county in which such prisoner is imprisoned.] And the expense of bringing such prisoner to such assizes (not exceeding 1s. a mile) shall be paid to the gaoler who brings such prisoner, out of such prisoner's effects, if sufficient to pay such expense; and if not, then such expense shall be paid by the treasurer of the county, &c. in which such prisoner is imprisoned [||out of the stock of the county, &c.] as the same shall be ordered by such court from which such execution issued, or in the prison of which such prisoner is, [¶by one of the judges of

* "Or mesne process" added in 37 Geo. 3. c. 49. Ir.

† "Not exceeding 2s." by the 37 Geo. 3. c. 85. s. 4. Eng.

‡ "Except within the county or city, or county of the city, of Dublin" are the words substituted in 37 Geo. 3. c. 49. Ir.

|| By the 37 Geo. 3. c. 49. Ir. the grand jury of such county, or county of a city, is required to present the amount thereof.

¶ "By any judge before whom such prisoner may be brought" in 37 Geo. 3. c. 49. Ir.

assize,

assize, or justices of great sessions.) And the creditors, their executors or administrators, at whose suit such prisoner so stands charged, by rule of the court from whence the process issued, shall be summoned to appear at the said next assizes, if such creditors, &c. can be met with; and if not, then the attorney last employed for such creditors shall be summoned; and a copy of such rule shall be served on such creditors, &c. or left at their usual place of abode, or with their attorney last employed, *14 days at least before such assizes, &c. *"10 days" in 37 Geo. 3. c. 49. Ir. And on an affidavit of such service being laid before the judge of assize or of great sessions, such judge being satisfied with the truth of such affidavit, is to appoint a time for the hearing such petition on some day, [on the crown side of such court] during such assizes, &c. And upon the appearance of the creditor, &c. +These we do not in 37 Geo. 3. c. 49. Ir. summoned in pursuance of this act; or in default of their appearance in person, or by attorney, on proof of their being served with the notice required, and a copy of the account of the estate of such prisoner being comprised in such notice, and of the rule of court for his appearance at the assizes, &c. having been served; the judge shall, in a summary way, examine into such petition, and hear what shall be alleged for or against the discharge of such prisoner; and upon such examination, such judge is to administer to such prisoner the oath before appointed: and such judge is to make such order in the premises as seems meet, and proceed in the same manner concerning the discharge of any prisoner in any prison within their respective jurisdictions, and give the same relief and directions as any court out of which any process issued against any prisoner as aforesaid: and every order so made by such judge of assize, &c. shall be as effectual as if made in the court out of which the process issued on which such prisoner was [†charged in execution;] and the same shall be made a record of the proceedings at such assizes, &c. and a copy thereof shall †"Committed to prison" in 37 Geo. 3. c. 49. Ir. be transmitted to the court from whence the execution§ against

§ Ormesne process" added in 37 Geo. 3. c. 49. Ir.

against the prisoner discharged issued, signed by the judge of assize, &c. to be a record of the said court. These several clauses of the 32 Geo. 2. c. 28. Eng. are adopted in the 37 Geo. 3. c. 49. Ir. with such variations as are noted in the margin.

Prisoner compellable to assign his estate and effects to his creditors.

32 Geo. 2. c. 28. s. 16. Eng.

Notice required to be given to the prisoner.

The 32 Geo. 2. c. 28. Eng. further provides (s. 16.) that if any prisoner charged in execution for any debt or damages not exceeding £100. besides costs, shall not, within 3 months after he is charged in execution, make satisfaction to his creditors who so charge him, then such creditors, their executors or administrators, are empowered to require such prisoner, on giving 20 days notice in writing to him, that they design to compel him to give into the court from which the process issued, on which he is charged in execution, or into the court in the prison of which he hath been removed by *Habeas corpus*, or remains charged in execution, within the first 7 days of the term next ensuing the expiration of the said 20 days, in respect to any prisoner charged in any prison belonging to the courts in Westminster-Hall; and at the second court held by any other court of record after the expiration of the said 20 days, in respect to any prisoner charged in any prison belonging to any other court; and where any such prisoner is charged in execution in any prison above 20 miles from Westminster Hall, or the court out of which the process on which he is charged in execution issued, then to give in upon oath, at the assizes or great sessions as aforesaid, and on the crown side thereof, for the county or place in the prison of which such prisoner is, next after the expiration of such 20 days, an account in writing, signed with his name or mark, of his real and personal estate, and of all incumbrances affecting the same, to the best of his knowledge and belief, in order that his effects may be divested out of him, and may by the court or judge as aforesaid be ordered to be assigned in manner and for the purposes herein after declared: and every creditor requiring any prisoner to be brought up as aforesaid, shall

shall also give 20 days notice in writing of his intention to all other creditors of such prisoner, at whose suit he is detained, (if he be detained or charged in execution at the suit of any other creditors besides those giving such notice) if such other creditors can be found, and if not, then to the several attornies last employed in the respective actions in which such prisoner is so detained; and shall give a like notice in writing to the sheriff or gaoler, &c. of his intention to have such prisoner brought up, and require such sheriff or gaoler to bring up such prisoner; and such notice to any sheriff or gaoler shall be so given, 20 days at least before the time appointed for such prisoner to be brought up; and thereupon every such sheriff or gaoler to whom such notice is so given, shall, at the costs of such creditor, cause such prisoner to be brought, as by such notice is required, to such court, assizes, or great sessions, as aforesaid, together with a copy of the causes of his detainer: and if such sheriff or gaoler (on such notice in writing being given him, and tender, on behalf of such creditor, of reasonable charges, not exceeding 1s. a mile, to bring up the prisoner required,) neglect to bring him there at the time required, with a copy of his detainer, such sheriff, &c. shall forfeit £20. to be recovered by the party aggrieved, by action of debt, &c. in any court of record at Westminster, if such offence be committed out of Wales, or the county palatine of Chester; and if in the principality of Wales, or county palatine of Chester, then in some court of record in the said principality, or county palatine, within the jurisdiction of which such offence is committed, with treble costs. And by s. 17. every prisoner charged in execution, who in pursuance of this act, shall, at the desire of any creditor, be brought up to any such court, shall, on proof there first made of such notice, as before directed, having been given, deliver in court upon oath, within the time before prescribed, an account in writing of his real and personal estate, and of all writings, and securities relating thereto, and of all incumbrances then affecting the same, and the respective times when made, to the best of his knowledge and belief, except necessary wearing apparel and bedding of such

Notice required to be given to other creditors.

Notice to sheriff or gaoler required.

Penalty for default of sheriff, &c.

s. 17.

Prisoner to deliver in a schedule of his estate and effects.

Effects to be distributed amongst such creditors as shall consent to prisoner's discharge.

Prisoner there-upon discharged.

Fee for his discharge.

such prisoner and his family, and the necessary tools of his trade, not exceeding the value of £10. which account shall be subscribed with the name or mark of such prisoner: and on the delivering in of such account, the effects of such prisoner shall be assigned by such prisoner, by a short indorsement on such account, to such persons as the court or judge, in which, or to whom, such account shall be so given in, shall order, in trust for the creditor who required such prisoner to be brought up, and of such other creditors (if any) at whose suit such prisoner is charged in custody or in execution, and who by writing, signed by them respectively before such assignment, consent to such prisoners being discharged at their suits, and agree to take a proportionable dividend of his effects, with the creditor who required him to be brought up; and if there be no other creditors, or, there being such, they do not agree in writing to discharge such prisoner, and accept such proportionable dividend, then in trust for the creditors only who shall require such prisoner to be brought up; and by such assignment all the prisoners effects shall be vested in the creditors, to whom the same are assigned in trust as aforesaid; and if any overplus remain after payment of the debt, or damages, and costs, due to any creditors, at whose suit such prisoner is discharged, and all charges of getting in such effects, the same shall be paid to such prisoner, his executors, administrators, or assigns. And upon every such assignment by such prisoner, to the satisfaction of the court, judge of assize, or justice of great sessions, before whom the same is made, such prisoner shall by such court or judge be discharged, in the actions of the creditors who require such prisoner to be brought up, and in the actions of every other creditor signing such consent as aforesaid, with the same benefit of making use of such discharge, as is before provided for prisoners seeking and obtaining their discharge under the provisions in the former part of this act; and no greater fee than 2s. 6d. shall be taken for such discharge by any officer of such courts, &c. and no stamp shall be necessary on such assignment

assignments, or any rule made for such discharge. But all the future effects of such prisoner (except the necessary wearing apparel and bedding of such prisoner and his family, and the tools of his trade) shall be liable to his debts, if not fully paid from his estate assigned as aforesaid. And no advantage shall be taken in any action against such prisoner, his heirs, executors, or administrators, for that the cause of action did not accrue within 6 years next before the commencing of such action, unless such prisoner was entitled to such advantage before he stood charged by the original action; and in such case the same may be pleaded by such prisoner, his heirs, &c. And if any prisoner charged in execution, and required to be brought up as aforesaid, neglect or refuse to deliver in and subscribe such account of his effects in such court, &c. within the time before appointed, or within 60 days then next following, without making appear some just excuse to be allowed of by the court, &c. or refuse to assign his effects, he so offending, and convicted upon indictment, shall be transported for 7 years: And if such prisoner deliver in a false account of his effects, or designedly conceal, and not insert in the account, any securities or writings relating to his effects, with intent to defraud his creditors, and be convicted on indictment, he shall suffer the pains and penalties of wilful perjury. And by s. 18. if any person taking any oath by this act required, upon any indictment for perjury, be convicted by confession or verdict, he shall suffer the pains of wilful perjury, and shall be liable to be taken on any process *de novo*, and charged in execution for the said debt, as if he had not been discharged, or not charged in execution before, and shall never after have the benefit of this act. By s. 19. if the effects of any prisoner assigned in pursuance of this act, extend not to satisfy the whole debt, and the fees to the gaoler, such gaoler shall only receive a proportionable dividend in respect of such fees, *pro rata*, with the other creditors. By s. 20. the prisoner so discharged shall never after be arrested for the same debt; nor shall any action of debt be brought against him

Future effects of prisoner liable.

How far such prisoners entitled to the benefit of the statutes of limitation.

Punishment of prisoner for not delivering schedule or executing assignment.

Or for false affidavit.

s. 18.

Or for false oath.

s. 19.

Warden's fees when abated.

s. 20.

Effect of prisoner's discharge.

him on any such judgment, unless he be under this act convicted of wilful perjury; but notwithstanding any discharge by this act for the person of such prisoner, the judgment against him shall continue in force, and execution may at any time be taken out thereon against the lands or goods of such prisoner, except the necessary wearing apparel and bedding of himself and family, and the tools for his trade, not exceeding £10. in value.

s. 21,

Assignees may compound debts, and refer matters to arbitration.

By s. 21, any assignee to whom by virtue of this act the effects of any prisoner discharged by this act shall be assigned, is empowered to make composition with any debtors or accountants to such prisoner, where the same appears reasonable, and to take such part of any debt as can be gotten, in full discharge of such debt or account; and also to submit any difference concerning such prisoner's effects, or in respect of any debt to such prisoner, to the determination of arbitrators chosen by the assignees, and the parties with whom such difference is; and if such arbitrators cannot agree, then to the determination of any umpire chosen by them, or otherwise to settle the matter in difference between them, as such assignees think fit; and the same shall be binding, as well to all other of the prisoner's creditors who have charged him in custody or execution, as to such prisoner: and every such assignee is indemnified for what he fairly does in the premises according to this act. And

s. 22,

Assignees responsible to court, and may be removed, &c.

by s. 22. it shall be lawful for the respective courts at Westminster, from whence any process issued, upon which such prisoner was charged in execution, whose effects are assigned, or where such prisoner is charged in execution by process issuing out of any other court, it shall be lawful for the judges of K. B. C. B. or Exc. or any one of them, on the petition of any creditor having charged such prisoner in execution, or of such prisoner, complaining of any fraud or misbehaviour of any such assignee, to order the parties concerned to attend such court or judge at some certain time in such order mentioned; and every such court at Westminster, and every judge thereof, is hereby authorized to make such order in the premises, either for displacing such assignee, and

and appointing a new assignee, or for the prudent management of the said effects for the benefit of the creditors, as any of the said courts or judges think fit; and in case of the displacing of an assignee, and the appointing a new assignee, the effects of such prisoner shall from thenceforth be divested out of the assignee so removed, and be vested in, and delivered over to the new assignee, in the same manner and for the like purposes, as the same were before vested in the former assignee.

By s. 23. where mutual credit shall have been given between any prisoner discharged under this act, and any other person, &c. before the delivery of any schedule of the effects of such prisoner upon oath, the assignees of such prisoner shall state an account between them; and nothing more shall be vested by any assignment made in pursuance of this act, as effects of such prisoner, than what appears due to him for the balance of such account.

s. 23.

Assignees to set off mutual credits.

By s. 24. no person who shall take the benefit of any act for the relief of insolvent debtors, shall have any benefit under this act, or be deemed within the meaning hereof, so as to gain any discharge, unless compelled by any creditor to deliver up his effects. By s. 25. this act shall not extend to Scotland. To these several clauses (s. 16 to 22.) there are none corresponding in any Irish statute. The

s. 24.

None entitled to the benefit of this act, who have taken the benefit of any act of insolvency; unless compelled to deliver up their effects.

48 Geo. 3. c. 123. E. further provides, that all persons in execution upon any judgment of any court, of record or not of record, for any debt or damages not exceeding £20. exclusive of costs recovered by such judgment, and who shall have lain in prison thereupon for 12 successive calendar months next before their application to be discharged as hereinafter mentioned, shall upon application made in term time, to one of the superior courts at Westminster, to the satisfaction of such court, be discharged out of custody: Provided that in case such judgment be obtained in any of the said superior courts, such application shall be made to such one of those courts only wherein such judgment shall have been obtained, and that whether the person so in execution shall then be detained in the prison of the same court, or stand committed on *habeas corpus* to the gaol of another court:

s. 25.

Scotland excepted.

48 Geo. 3. c. 123. s. 1. E.

Persons who have lain in prison 12 months under execution not exceeding £20. shall on application be discharged.

*Persons fraudu-
lently obtaining
discharge liable
to be taken in
execution, &c.*

*Estates of debt-
ors liable not-
withstanding
discharge.*

*But their persons
not liable, and
their bail exon-
erated.*

*Ireland and
Scotland ex-
cepted.*

§ 2.
*Writs of execu-
tion shall bind
goods but from
the time of their
delivery.*
29 Car. 2. c. 3.
s. 16. Eng.

And provided that if any such discharge shall have been unduly obtained upon any false allegation, such prisoner shall, upon the same being made appear to the court by whose rule the prisoner had been so discharged, be liable to be again taken in execution, and remanded to his former custody by such court: Provided also that no sheriff or other person, shall be liable for the escape of any such prisoner, in respect to his enlargement during such time as he shall have been at large by means of such his discharge as aforesaid: And provided, that notwithstanding the discharge of any debtor by virtue of this act, the judgment whereon such debtor was taken or charged in execution, shall continue in force, except as to the taking in execution the person of such debtor, as hereinafter provided; and it shall be lawful for such creditor to take out such execution on such judgment against the lands, &c. goods, &c. of such debtor (except the necessary wearing apparel and bedding of him and his family, and the necessary tools for his trade or occupation, not exceeding the value of £10.) or to bring any action on such judgment against such debtor, or to bring any action, or use any remedy for the recovery of his demand, against any other person liable to satisfy the same, in such manner as such creditor could have done in case such debtor had never been charged in execution upon such judgment: Provided also that no debtor who shall be duly discharged in pursuance of this act, shall be taken or charged in execution upon any judgment herein before declared to continue in force, nor be arrested in any action upon such judgment; and no proceeding shall be maintained against the bail in any action upon the judgment, wherein the defendant shall have been charged in execution, and discharged by this act. By s. 2. this act shall not extend to Ireland or Scotland.

II. Next as to the writ of *fiери facias*: The 29 Car. 2. c. 3. s. 16. Eng. provides, that no writ of *fiери facias*, or other writ of execution, shall bind the property of the goods, [* of the party] against whom such writ of execution is sued forth, but from the time that such writ

* These words omitted in the 29 Car. 2. c. 3. Eng. but inserted in 7 W. 3. c. 12. Ir.

shall

shall be delivered to the sheriff, under-sheriff, or coroners, to be executed: And the sheriff, &c. shall upon the receipt of any such writ, (without fee for doing the same) indorse upon the back thereof the day of the month [*or] year whereon he received the same: The 7 W. 3. c. 12. Ir. contains a similar clause. By the 8 Ann. c. 14. s. 1. Eng. no goods or chattels being upon any messuages, lands, or tenements, which are leased, shall be taken by any execution,† unless the party at whose suit the execution is sued out, shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent for the premises, at the time of taking such goods by such execution; provided the arrears do not amount to more than one year's rent; and in case the arrears shall exceed one year's rent, then such party paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff, as well the money paid for rent, as the execution money. But by s. 8. nothing in this act shall prejudice the crown in the levying any debt, fines, penalties or forfeitures. And the 9 Ann. c. 8. Ir. contains similar clauses: but provides (s. 2.) that the landlord, or his agent, do make and produce an affidavit in writing (if thereto required by the plaintiff in such action or execution, or his agent,) that such arrear of rent is, *bona fide*, due to such landlord; which oath the sheriff, or sub-sheriff, or any magistrate, is empowered to administer.

III. The execution by *elegit* is founded on the 13 Edw. 1. st. 1. c. 18. E. & I. which enacts, that when a debt is recovered or acknowledged in the king's court, or damages awarded, it shall be in the election of him who sues for such debt or damages, to have a writ to the sheriff for levying the debt of the lands and chattels, or that the sheriff deliver to him all the chattels of the debtor, except his oxen and beasts of the plough,) and a moiety of his land, until the debt be levied by a reasonable price or extent; and if he be evicted, he shall recover by writ of *novel disseisin*, and afterwards by writ of *re-disseisin*, if there be occasion.

Next

† "Or foreign attachment, *justicies* or *distringas*" added in 9 Ann. c. 8. Ir.

*"and" in
7 W. 3. c. 12.
s. 12. Ir.

8 Ann. c. 14.
s. 1. Eng.
*No goods shall
be taken in exe-
cution unless
the party before
removal of the
goods, &c. pay
the rent due.*

*Provided it ex-
ceed not 1 year's
rent.*

s. 8.
*Right of the
crown saved.*
9 Ann. c. 8. Ir.

s. 2.

*Affidavit of rent
due, required.*

§. 3.

*Execution by
elegit.*
13 Edw. 1. st. 1.
c. 18. E. & I.

§ 4.

*Extent upon a
statute merchant.*

13 Edw. 1. st. 3.
E. & L.

*When the debt
or may sell the
lands extended.*

*The merchant
shall have an
estate of free-
hold in the lands
extended.*

IV. Next as to extents upon *statutes merchant* or *statutes staple*, pursuant to the 13 Edw. 1. st. 3. E. & I. and 27 Edw. 3. c. 9. E. & I. which have been already in part stated, (vol. 1. p. 540.—1.) By the former of these statutes, if the debtor do not pay the debt at the day, then shall the merchant come before the mayor and clerk with his obligation, and the mayor or chief warden shall cause the body of the debtor to be taken, (if he be lay) and shall commit him to the prison of the town, if there be any, and he shall remain there at his own costs, until he hath agreed for the debt; and if the keeper of the town-prison will not receive him, he shall be answerable for the debt; and if he have not whereof, he that committed the prison to his keeping shall answer it, and if the debtor cannot be found by the mayor or chief warden, then shall the mayor or chief warden send to the chancery the recognizance, and the chancellor shall direct a writ to the sheriff, in whose shire the debtor shall be, to take his body, (if he be lay) and safely to keep him in prison until he hath agreed for the debt; and within a quarter of a year after he is taken, his goods and lands shall be delivered: and it shall be lawful to him, during the same quarter, to sell his lands for the discharge of his debt; and if he do not satisfy it within the quarter, all the lands and goods of the debtor shall be delivered unto the merchant by a reasonable extent, to hold them until the debt is levied; and his body shall remain in prison, and the merchant shall find him bread and water: and the merchant or his assigns shall have such seisin in the land delivered, that he may maintain a writ of *novel disseisin*, and a *re-disseisin*, as of freehold, to hold to him and his assigns until the debt be paid; and as soon as the debt is levied, the body of the debtor shall be delivered with his lands. And in the writs which the chancellor shall award, mention shall be made, that the sheriff shall certify the justices of the one bench or of the other, how he hath performed the king's command at a certain day; at which day the merchant shall sue before the justices if he be not satisfied; and if the sheriff do not return the writ, or return that the writ came

came too late, or that he hath directed it to the bailiff of some franchise, the justices shall do as is contained in the statute 13 Edw. 1. st. 1. c. 39. (*ante* p. 190.) And if the sheriff return that the debtor cannot be found, or that he is a clerk, the merchant shall have writs to all the sheriffs where he shall have any land, that they deliver all the goods and lands of the debtor by a reasonable extent, to hold unto him and his assigns: and he shall have a writ to what sheriff he will, to take his body (if he be lay); and the keeper of the prison must answer for the body, or the debt; and after that the debtor's lands be delivered to the merchant, the debtor may sell his land, so as the merchant have no damage by the approvements; and the merchants shall be allowed their damages and costs.

And if the debtor find sureties, which shall acknowledge themselves as principal debtors, the sureties shall be ordered as the principal debtor. And the merchant shall have seisin of all the lands that were in the hand of the debtor the day of the recognizance made, in whose hands soever they come by feoffment, or otherwise; and after the debt paid, the lands and issues thereof shall return again, as well to the feoffees, as the other lands unto the debtor: and if the debtor or his surety die, the merchant shall have none authority to take the body of his heir, but he shall have his lands if he be of age, or when he shall be of age, until he hath levied the debt. And by the 5 Hen. 4. c. 12. E. & I. when any statute merchant is certified into chancery, and a writ awarded to the sheriff, and returned into the common place, and the statute there once shewed, howsoever the process afterwards be discontinued, the justices of the bench may upon the same record award execution of the statute, without shewing thereof at any other time.

Sureties liable as principals.

The heir's land liable.

5 Hen. 4. c. 12. E. & I.

Execution may be awarded upon a statute once shewed in court.

And as to the proceedings upon a statute staple: By the 27 Edw. 3. st. 2. c. 9. E. & I. the mayor of the staple may take and hold in prison the bodies of the debtors after the term incurred, if they be found within the staple, till they have made gree; and also arrest the goods found within the staple, and deliver them to the creditors, or sell them at the best, and deliver the money to the creditors; and in case the debtors be not found within

How execution shall be of a statute staple.

27 Edw. 3. st. 2. c. 9. E. & I.

within the staple, nor their goods to the value of the debt; the same shall be certified in the chancery under the said seal, by which certification a writ shall be sent to take the bodies, and seize the lands and goods; and the writ shall be returned into the chancery, with the certificate of the value of the lands and goods; and thereupon execution shall be made from day to day, in manner as in the statute merchant: so that he to whom the debt is due shall have estate of freehold in the lands, and recovery by writ of *novel disseisin* if he be outed. And the debtor shall have no advantage of the quarter of a year in the said statute-merchant. And the

11 Hen. 6. c. 10.
E. & I.

He shall find
sureties that su-
eth to defeat an
execution upon
a statute.

11 Hen. 6. c. 10. E. & I. provides, that where persons taken for execution of recognizances of the staple, come in by writs of *corpus cum causa* in chancery, shewing forth divers indentures and other things in defeazance, desiring writs of *seire facias* to warn the parties at whose suit they be taken, and by surety found to the king have been delivered; from henceforth such sureties shall be made severally as well to the king as to the party. And as to recognizances in the nature of a statute staple: the 23

23 Hen. 8. c. 6.
s. 6. Eng.

Execution upon
a recognizance
in the nature of
a statute staple.

Hen. 8. c. 6. Eng. (which has been also in part stated *ante* vol. 1. p. 542.) provides (s. 6.) that every person to whom such obligation shall be made, for default of payment, shall have like process and execution as hath been used upon any obligation of the statute-staple. By s. 7.

s. 7.

The recognizor
shall be relieved
by audita que-
rela, &c.

every person that shall be bounden or grieved by virtue of any obligation made by authority of this act, shall have their remedy by *audita querela*, and other remedies, as if bounden by obligation of the statute of the staple.

s. 9.

Remedy for te-
nant by recogni-
zance, disseised.

And by s. 9. every person that shall have execution of any lands, &c. by reason of any such obligation, their executors, &c. being put out or disseised, shall have like remedy as persons having execution upon any statute of the staple. And by s. 8. every person that shall

s. 8.

Poundage to
the king.

have process for execution by reason of any such obligation, shall pay to the king at the time of the sealing of the process, one halfpenny for every pound contain-

8 Geo. 1. c. 25.
s. 3. Eng.

ed in the obligation. But by the 8 Geo. 1. c. 25. s. 3. Eng. the prosecutor of every such recognizance shall, at the

time

time of suing out the first writ of extent, deliver into the officer a note, testifying the sum of the damages intended to be levied, which sum the officer shall insert in the writ; and the poundage of one halfpenny shall be taken only for every pound, according to the sum so inserted. The prosecutor, &c. shall deliver a note of the sum to be extended. What poundage to be taken.

And by s. 4. in case it shall at any time before or after the filing or returning of any *liberate*, be made appear to the chancery, that sufficient has not been levied to satisfy the recognizance, or that any omission or error has happened in suing out, executing, or returning any of the said writs, or any process thereon; or that any lands shall be evicted from any person who shall have extended the same by virtue of such process; the chancery shall award re-extents for satisfying the same, and writs of *liberate* may be sued out thereupon. In what cases chancery may award re-extents.

And by s. 5. no sheriff shall take for the extent and *liberate*, and *habere facias possessionem* or *seisinam*, on the real estate, and levy on the personal estate, by virtue of such extent, more than the fees appointed by the 3 Geo. 1. c. 15. *post* for executing a writ of *elegit*, and *habere facias possessionem* or *seisinam*, under the like penalties. To which statutes there are none corresponding in Ireland. s. 4. s. 5. What fees sheriff shall take.

V. To authorize the suing out execution after the year upon common law recognizances, and upon judgments in personal actions, &c. the 13 Edw. 1. st. 1. c. 45. E. & I. provides, that those things which are found inrolled before them that have record, or contained in fines, whether they be contracts, covenants, obligations, services, or customs, whereunto the king's court may give authority, shall have such force that it shall not be needful to plead for them; but when the plaintiff cometh to the court, if the recognizance, or fine levied, be lately done, *viz.* within the year, he shall forthwith have execution: and if the recognizance were made, or the fine levied, of a further time passed, the sheriff shall be commanded that he give knowledge to the party that he be afore the justices at a certain day, to shew if he have any thing to say, why such matters inrolled or contained in the fine ought not to have execution: and if he come not at the day, or do come and can say nothing, the sheriff shall be commanded to cause the thing inrolled

§ 5. Scire facias to issue upon recognizances, &c. after the year. 13 Edw. 1. st. 1. c. 45. E. & I.

rolled or contained in the fine to be executed: in like manner the ordinary shall be commanded in his case: observing nevertheless what is before said of a mesne *who by recognizance or judgment is bound to acquit.

32 Hen. 8. c. 5. Eng.

Remedy when
lands delivered
in execution are
evicted.

And the 32 Hen. 8. c. 5. Eng. recites, that where lands, &c. delivered in execution at a reasonable extent, upon judgments, statutes merchant, or of the staple, or recognizances, were recovered or lawfully divested or evicted from the possession of such recoverors, obligees, or recognizees, their executors or assigns, before they were fully satisfied and paid their debts and damages, without fraud or other default of such recoverors, &c. in such case such recoverors, &c. were without remedy; and therefore provides, that such recoverors, &c. may in every such case have a *scire facias* out of the same court, from whence the former execution did proceed, against such persons as the said writ of execution was first pursued, their heirs, executors, or assigns, of such lands, &c. as were then charged with the execution, returnable 40 days after the date; at which day if the defendant, being warned, make default, or do not shew sufficient cause, the lord chancellor, or justices, before whom such *scire facias* shall be returnable, shall make new a writ, out of the former record of the judgment, &c. of like nature as the former writ was, for the levying of the residue of such debt and damages. The 10 Car. 1. st. 3. c. 7. Ir. is the corresponding statute in Ireland: the provisions of which are by the 26 Geo. 3. c. 31 s. 2. Ir. extended to all cases where any of the lands, &c. so taken in execution, or any part of the estate or interest of the consumer therein, shall be evicted. The 16 & 17 Car. 2. c. 5. Eng. further provides, that when any judgment, statute, or recognizance, shall be extended, the same shall not be avoided or delayed by occasion that any part of the lands extendible are omitted out of such extent; saving always to the parties whose lands shall be extended, their remedy

10 Car. 1. st. 3. c. 7. Ir.

26 Geo. 3. c. 31. s. 2. Ir.

Like remedy
where any part
evicted.

16 & 17 Car. 2. c. 5. Eng.

Extents not
avoided by omis-
sion of part of
the lands.

* This refers to the 13 Edw. 1. st. 1. c. 9. E. & L. which provided the ancient writ of mesne, and process thereupon, for the relief of tenants in demesne distrained for the services of their mesne lords.

remedy for contribution against such persons whose lands shall be omitted. But by s. 3. this act shall not give any extent or contribution against any heir within the age of 21, during minority of such heir, in respect of any lands descended. And by s. 4. this act shall extend only to statutes for payment of monies, and to such extent as shall be within 20 years after the statute, recognizance, or judgment. The 17 & 18 Car. 2. c. 11. Ir. contains the same provisions: and is rendered more effectual by the 26 Geo. 3. c. 31. s. 1. Ir. which provides (s. 1.) that in every such writ of *scire facias*, it shall be lawful to insert the names of the heir, and of such ter-tenants of the lands of which the conusor was seised at the time of such judgment or recognizance, as the conusee shall think necessary; and the sheriff shall summon such heir and ter-tenants only; and no ter-tenant summoned on such writ shall be admitted to plead that any other ter-tenant hath not been summoned; saving to the party whose lands shall be so extended, his heirs, executors, and assigns, their remedy for contribution against such ter-tenants who shall not be so summoned.

s. 3.

Proviso for heirs within age.

s. 4.

To what statutes and extents this act extends.

17 & 18 Car. 2.

c. 11. Ir.

26 Geo. 3. c. 31.

s. 1. Ir.

In scire facias not necessary to name all the ter-tenants.

VI. As to the fees upon executions; the 29 Eliz. c. 4. § 6.

Eng. provides, that it shall not be lawful for any sheriff, under-sheriff, bailiff of liberties, their officers, servants, or deputies, by colour of their offices, to take for the

Sheriff's fees on executions limited.

29 Eliz. c. 4.

s. 1. Eng.

serving of any extent or execution upon the body, lands, or goods, of any person, more than in this act is appointed, viz. 12d. for every 20s. where the sum exceedeth not £100. and 6d. for every 20s. above £100, that he shall levy and deliver in execution, or take the body in execution for; upon pain that every sheriff, &c. which shall do the contrary, shall forfeit to the party grieved his treble damages, and shall forfeit £40. the one moiety thereof to the crown, and the other moiety to the party that will sue for the same by action, &c.

But by s. 2. this act shall not extend to any fees to be taken for any execution within any city or town corpo-

s. 2.

Exception of cities, &c.

rate. And by the 3 Geo. 1. c. 15. s. 17. Eng. poundage

3 Geo. 1. c. 15.

s. 17. Eng.

in no case shall be taken on executing any writ of *capias* *et satisfaciendum*, or on charging any person in execu-

tion.

Poundage shall not be taken for executing any Ca. Sa. upon any judgment, &c. for any greater sum than remains due.

Penalty.

s. 16.

Fees on executing an hab. fac. possess. or elegit.

6 Ann. c. 7.
s. 1. Ir.

No officer to demand fees on executions for more than the plaintiff or his attorney certifies to be due.

Certificate to be filed.

tion by virtue of such writ, for any greater sum than the real debt amounts to; which sum the plaintiff is to mark on the back of the writ, before it be delivered to the sheriff: And if any sheriff, &c. shall take greater fees, he shall be adjudged guilty of extortion; and shall forfeit to the party grieved treble damages, and double the sum extorted; to be decreed by the court out of which such writ issued, on complaint and proof of such extortion before the court, in such summary way as to them shall seem meet; and every person so offending shall forfeit £200. one moiety to the king, and the other to such as shall sue for the same; to be recovered by action of debt, &c. in any court of record at Westminster; provided such suit be commenced within 2 years after the offence. And by s. 16. for ascertaining the fees for executing writs of *elegit*, (so far as the same relate to the extending of real estates) and *habere facias possessionem* or *seisinam*, it shall not be lawful for any sheriff, under-sheriff, or their bailiffs, or for the bailiff of any liberty, by colour of their office, to receive any greater fee than 12*d.* for every 20*s.* of the yearly value of any lands, &c. whereof possession or seisin shall be given, where the whole exceeds not the yearly value of £100. and 6*d.* for every 20*s.* *per ann.* above the yearly value of £100. The 6 Ann. c. 7. Ir. also regulates the fees of sheriffs on executions; and by s. 1. provides, that no sheriff or other officer having execution of writs, shall receive or demand fees for executions either on judgments, statutes, or otherwise, for more than what the party, at whose suit the execution issues, or his attorney, shall under his hand certify to be justly due to him thereon; and at the time that any writ of execution shall be demanded, the party demanding the same shall lodge with the officer a writing or certificate, under the hand of such party, or of his attorney, containing such sum as such party insists on to be in good conscience due to him, after all equitable deductions out of the sum for which the said judgment is given; which certificate shall be filed in said office, and the sum therein contained shall be entered in the book where the executions are entered, and also on the foot of

of the writ of execution that shall issue; for all which the fee of 12*d.* and no more shall be taken; and no sheriff, &c. shall levy any greater sum, or demand or receive more fees on such executions, than for such sum as shall be so entered on the foot of such execution, notwithstanding such execution shall contain a greater sum than is so entered on the foot thereof; and no execution shall be executed at the foot of which such entry shall not be made as aforesaid. And by s. 2. in case any sheriff, &c. shall demand or receive fees for more than appears to be due by such certificate, such sheriff, &c. shall be liable to the action of the party against whom such execution issues, and shall forfeit to the said party his double damages: and if the party at whose suit such execution shall issue, or his attorney, shall omit to deliver an attested copy of such certificate, together with such writs of execution, or shall appear wilfully, fraudulently, and maliciously, to have overcharged the party against whom such execution issues, in such certificate, such party, at whose suit such execution issues, shall forfeit to the party grieved his treble damages: And said execution shall be marked with the sum contained in the certificate by the proper officer issuing such execution. By s. 3. on all executions by *capias ad satisfaciendum*, *fieri facias*, or *elegit*, where body, goods, or chattels, are taken in execution, the sheriff, &c. may after such execution executed, take for his fees 12*d.* per pound for the first £100. and 6*d.* per pound for every other £100. and so proportionably for what shall appear to be due to the plaintiff by such certificate, and no more; except where goods and chattels only are taken in execution, which do not amount to the value of the plaintiff's demand, and in such case the sheriff, &c. shall take poundage, according to the abovementioned rate, for so much only as the goods or chattels taken in execution shall be valued at, or amount unto, and as he shall levy and pay over to the plaintiff. By s. 4. on executions by writs of *elegit*, *extendi facias*, *capias utlagatum*, *liberate*, and other executions against lands, &c. where the same only shall be seized into the hands of the crown for the benefit

s. 2.

Penalty for officers demanding, &c. more fees than due by certificate.

Penalty for overcharging execution, &c.

Execution to be marked with the sum in certificate.

s. 3.

Fees on Ca. Sa. Fi. Fa. or elegit.

s. 4.

Fees on executions where legal possession only is delivered.

Fees where actual possession is delivered.

benefit of the subject, or legal possession only shall be delivered, the sheriff, &c. may take £1. 6s. 8d. for executing the same, and no more fees of poundage, or otherwise: and on execution by writ of *elegit*, *liberate*, and in all other cases where actual possession of lands, &c. shall be delivered, the sheriff, &c. may receive 12d. in the pound, so as the fees upon any one execution do not exceed £5.; and in cases of *habere facias possessionem* £2. 10s. and no more; which fees, and no other gratifications or reward, he shall receive, but shall not demand the same until the said writs are duly and fully executed.

s. 5.

On sheriff's return of non est inventus, or nulla bona, plaintiff may take out the same or other execution, &c. to coroner.

And this act provides (s. 5.) that where any sheriff shall on any mesne process or execution return, that the person against whom such mesne process or execution issues cannot be found, or that he hath not any goods or lands, in such case the plaintiff may take out the same, or any other mesne process or execution, directed to all or any of the coroners of the said county, who shall execute the same: and said coroners may take bail for the appearance of such person taken by them on mesne process, as the sheriff might have done, and shall be liable to an action, in case of any escape of any person in his custody on such mesne process or execution, as the sheriff should have been; and said coroners may take such fees, and no more, for execution of said writs as by this act appointed: and in case said coroners shall commit any person to the county gaol, the gaoler shall receive them. By s. 6. where any sheriff, or other officer, shall wilfully neglect, delay, or refuse to execute any such execution, or to do any part of his office therein, or shall demand or receive any other fee, or reward, than as abovementioned; or shall not hold an inquiry on such writ of *elegit*, *extendi facias*, or *capias utlagatum*, within 10 days after such *elegit*, &c. delivered or tendered to him, or shall hold such inquiry at any place save the chief town in the county, or such other place as shall be agreed on between him and the party delivering such writ, or without giving notice in writing, 8 days before the execution thereof, to the said party of the time and place of holding such inquiry; such sheriff, &c. shall

s. 6.

Penalty for officer not executing, taking other fee, or not duly holding inquiry.

forfeit

forfeit to the party grieved £20. or treble damages, at the election of the plaintiff, to be recovered in any court of record: And if upon such inquiry any lease for years shall be found, before the sale thereof, the sheriff, &c. before whom such inquiry shall be so held, shall, after such inquiry, give notice in writing under his hand, that such lease has been found, and therein name the parties, both plaintiff and defendant, and the debt, interest and costs demanded, and the lands or tenements found thereby; and affix said notice in the most public place in the shire-town of the county, town, or city, wherein such lease-hold lands, &c. lie, by the space of 8 days before any sale shall be made by such sheriff, &c. of such lease. But it is provided that no more shall be recovered against any sheriff, coroner, or marshal of the Four-Courts in any action of escape, than the sum so certified to be due,* and damages for non-payment. And this section of the act also provides, that when any money shall be received by such sheriff or other officer on any execution, the same shall be paid on demand, or within 6 days after, to the party at whose suit the execution issues, or to his attorney or assigns, after the return of the said execution be out; and in case he delay or refuse to do the same, he shall answer and pay to the plaintiff, or any person by him authorized, double the sum so levied and received. And by the 19 & 20 Geo. 3. c. 38. s. 8. Ir. any sheriff or sub-sheriff, who shall receive any sum in virtue of his office for any plaintiff, and shall with-hold (without reasonable cause of such neglect) the same for one calendar month after request, shall pay such plaintiff interest for such sum at the rate of £10. by the £100. and also the treble costs out of pocket of the application to the court where the process issues. The 43 Geo. c. 46. E. & I. contains a provision proper to be stated here: By s. 5. of this act, in every action in which the plaintiff shall be entitled to levy under an execution against the goods of any defendant, such plaintiff may also levy the poundage fees and expenses of the execution above the sum recovered by the judgment.

*Lease for years
how sold by
sheriff.*

*On escape no
more to be recovered than the
sum certified,
with costs and
damages.*

**Vide s. 1. ante
p. 316.*

*Penalty for
sheriff overhold-
ing money le-
vied.*

*19 & 20 Geo. 3.
c. 38. s. 8. Ir.*

*Sheriff's to pay
£10. per. cent.
and treble costs,
for over-holding
money levied.*

*43 Geo. 3. c. 46.
s. 5. E. & I.*

*Plaintiff may
levy expenses of
execution besides
amount of judg-
ment,*

With

§ 7.

Obligations
made to the king
shall have the
force of a statute
staple, &c.

33 Hen. 3. c. 39.
s. 50. Eng.

s. 51.

Who shall have
the king's spe-
cialties after his
death.

s. 54.

The king shall
recover costs,
&c.

s. 55.

Suits for the
king's debts shall
be in the courts
where they shall
be due.

Process thereon.

s. 56.

Execution there-
on.

s. 57.

Authority of
said courts.

VII. With respect to the recovery of the *king's debts*; the 33 Hen. 8. c. 39. s. 50. Eng. provides, that all obligations and specialties, which shall be made for any cause concerning the king, or to his use, shall be made by these words: *Domino regi, solvend. eidem domino regi, hæred. vel executoribus suis.* And such obligations and specialties shall be in the same force as the statute staple. And by s. 51. all such obligations, the debt not being paid, shall remain to the heirs or executors of the king, at the appointment of the king to whom such obligations shall be made. And if any one in his own person make or take any obligation to the use of the king, otherwise than is before expressed, such person shall suffer such imprisonment as shall be adjudged by the king, or his council. By s. 54. the king in all suits upon any obligation made to the king, or his use, shall have his debt, costs, and damages. And by s. 55. all suits upon any debt or duties which shall be due to the king in the offices and courts of his exchequer, duchy of Lancaster, surveyors general of his lands and tenements, and court of the first fruits and tenths, shall be sued in such one of the said courts and offices, in which the said debt did first grow, or in which the specialty is: And such suits shall be made under the seals of the said courts by *capias*, *extendi facias*, *subpæna*, attachments and proclamations of allegiance, or otherwise as shall be thought expedient. By s. 56. the court of exchequer, and all the said courts, shall have power to hear and determine such suits, and to do execution upon body, lands, and goods: And by s. 57. shall also have power to hear and determine all debts and other things, which shall arise upon any matter assigned to the governances of the same courts, or upon any thing which may concern the same, wherein the king shall be only party; and also all estates for term of years between party and party concerning the premises; and to punish by their discretions all persons which before them shall be convicted of any of the premises, according to the nature of their offence; treasons, murders, felonies, estates, rights, titles, and interests, as well of inheri-
tance

tance as of freehold, (other than jointures for life) only excepted. By s. 73. in all suits in the courts aforesaid for the recovery of debts to the king, by reason of any attainder, outlawry, forfeiture, gift of the party, or by any other collateral means; it shall be sufficient to shew generally, that the party to whom the said debts did belong, did give the same debts to the king, or was attainted, outlawed, &c. by reason whereof the said debts did accrue to the king; and the matter so shewed, without declaring the circumstances, shall be good in law. And by s. 74. if any suit be commenced, or process awarded, for the recovery of the king's debts, the same shall be preferred before the suit of any person; and the king shall have first execution; so always that the king's suit be commenced, or process awarded, before judgment given for the other persons. By s. 75. all lands, &c. which shall come to the seisin of any person to whom the same shall descend, revert, or remain in fee-simple or fee-tail, after the death of any ancestor, or by gift of his ancestors, which ancestor was indebted to the king, or to any person to his use, by judgment or specialty; in such case the same lands, &c. shall stand charged for the payment of the debt. By s. 76. the king shall not be excluded to demand his debts against any of his subjects, as heir to any person indebted to his highness, or to his use; albeit the word "heir" be not comprised in such recognizance or specialty; or that such persons shall say that they have not any lands, &c. to them descended, but only such as be entailed or given to them by their ancestors. Provided (s. 77.) that the king may at his liberty demand his debts of any executors or administrators of any persons indebted, if the executors, &c. have assets. By s. 78. if the said lands, &c. shall be evicted out of the possession of such persons by just title without fraud, whose lands, &c. shall be chargeable as aforesaid; then such lands, &c. shall be acquitted of the same debts. And by s. 79. if any person, of whom any such debt shall be demanded, shew in any of the said courts sufficient matter in law, or good conscience, why such persons ought not to be

s. 73.

A remedy for debts which grow to the king by attainder, &c.

s. 74.

The king shall be preferred in suit and execution.

s. 75.

Tenant in fee-simple or tail to pay his ancestor's debt to the king.

s. 76.

Heir liable to king's debt though not named in the recognizance, &c.

s. 77.

The king may charge executors, &c.

s. 78.

Proviso as to lands evicted.

s. 79.

Proviso as to matter pleaded in discharge of debt.

s. 80.

Lands chargeable to the king in several men's tenures.

s. 81.

Liberties of duchy of Lancaster saved.

s. 82.

Process in the exchequer as usual.

25 Geo. 3. c. 35.
s. 1. Eng.

Court of Exc. may order the estate of king's debtor to be sold.

charged with the same, and the matter so shewed sufficiently proved, the said courts shall have power to allow the proof, and acquit all persons so impleaded. By s. 80. if any lands, &c. chargeable with the debt of the king, be in the seisin of divers persons, other than the obligors, all the said lands, &c. shall be entirely, and in no wise severally, liable to the said debts. By s. 81. this act shall not take away any liberties belonging to the duchy and county palatine of Lancaster. And by s. 82. all process and executions for debts in the court of exchequer, shall be made in the exchequer by such officer as hath been used, as by this act is limited. By the 25 Geo. 3. c. 35. Eng. (which amends the 13 Eliz. c. 4. and 27. Eliz. c. 3.) it shall be lawful for the court of exchequer, on the application of the attorney general in a summary way, by motion to the same court, to order that the right, title, estate, and interest, of any debtor to the king, and the right, &c. of the heirs and assigns of such debtor, in any lands, &c. which shall be extended under a writ of extent, or *diem clausit extremum*, or so much thereof as shall be sufficient to satisfy the debt for which the same shall be extended, shall be sold in such manner as the court shall direct; and when a purchaser shall be found, the conveyance of the lands, &c. decreed to be sold, shall be made to the purchaser, by the remembrancer in the court of exchequer, or his deputy, under the direction of the court, by a deed of bargain and sale, to be inrolled in the same court; and after such conveyance and the inrolment thereof, the bargainee shall have the lands, &c. therein comprised, for his own use, not only against the extent of the crown, but also against such debtor of the crown, or the sureties for such debtor, and all persons claiming under such debtor, or the sureties, unless by a title paramount to, and available in law against such extent; and all monies payable from such purchaser shall be paid, accounted for, and applied towards the discharge of the debt due to the crown, and of all costs incurred by the crown in enforcing the payment of such debt, in such manner as the exchequer shall order: and if

if, after payment of the whole debt to the crown, and of all costs, there shall be any surplus of the monies arising from such sale, the said overplus shall belong to the same person as would be entitled to the lands, if there had not been a sale thereof, and shall accordingly be paid to such person, under the order of the court of exchequer, upon motion or petition to the said court, to be made upon such notice to the crown, and to be supported by such affidavits or process, as to the said court shall seem reasonable. And by s. 2. it shall be lawful for the court of exchequer to make order touching the production, delivery, and custody of title deeds and writings, in the same manner as if a decree had been made by the said court for a sale of the lands of a crown debtor, in execution of a trust created for payment of debts by such crown debtor himself.

s. 2.

*Court of Exc.
may order pro-
duction of title
deeds.*

For the more speedy and effectual recovery of the king's debts in Ireland, the 21 & 22 Geo. 3. c. 20. Ir. (which has followed the 33 Hen. 8. c. 39. Eng. 13 Eliz. c. 4. Eng. and 27 Eliz. c. 3. Eng. in several of their clauses) provides, that all obligations and specialties in any wise concerning the king, or to be made to the king, or to any person to the use of the king; and all suits, process, judgments, decrees, and executions, to be commenced and obtained for the king, may be prosecuted in like manner, and shall have the same force as writings obligatory acknowledged according to the statute of the staple. And by s. 2. the king in all suits upon any obligation made to the king, or to his use, shall recover his debt, costs, and damages. And by s. 4. if any suit be commenced, or process awarded, for the recovery of the king's debts, the same shall be preferred, and the king shall have first execution before any other person: so always that the king's suit be commenced, &c. before execution begun for the said other person; and if said other person shall claim by virtue of any judgment obtained by default, confession, or *nil dicit*, against any officer accountant to the king, such suit and process of the king shall be preferred, and the king shall have first execution, notwithstanding such judgment obtained, and

*Obligations, &c.
to the king, shall
have the force of
a statute staple.*

*21 & 22 Geo. 3.
c. 20. s. 1. Ir.*

s. 2.

*King shall reco-
ver costs, &c.*

s. 4.

*The king shall
be preferred in
suit and execu-
tion.*

s. 5.

All lands, &c. which any person accountable to the king shall have whilst so accountable, liable to the king's debt.

execution begun for such other person. By s. 5. all lands, &c. which any person accountable to the king for any office or charge, or receipt whatsoever, shall have within the time whilst he shall remain accountable or indebted, shall, until the payment of his 'arrearages due to the king, to be adjudged according to law, all reasonable petitions being allowed, be liable to the payment thereof, and be had and put in execution for the payment of such arrearages, in like manner as if such accountant had, the day he first became officer, receiver, or accountant, stood bound by writing obligatory having the effect of a statute staple to the king.

s. 3.

Lands chargeable to the king in several men's tenure,

And by s. 3. if any lands, &c. which shall be chargeable with any debt to the king, by obligation or other specialty, shall be in the seisin and possession of divers persons, other than the obligor, then all said lands, &c. in the seisin, &c. of such other persons, shall be entirely, and in no ways severally, liable to the payment of said debt.

s. 6.

Tenant in fee-simple or tail to pay his ancestor's debt to the king.

And by s. 6. all lands, &c. in the possession or seisin of any person to whom the same lands, &c. shall descend, revert, or remain in fee-simple, or fee-tail, general or special, after the death of his ancestor, as heir, or by the gift of any of his ancestors whose heir he is, which ancestor was indebted to the king, or to any person to the king's use, by judgment, recognizance, obligation, or other specialty, the debt whereof shall not be paid, shall stand charged for the payment of the said debt.

s. 7.

Heir liable to ancestors' debt though not named in the recognizance, &c.

And by s. 7. the king shall not be barred to demand his debts against any of his subjects, as heir to any person indebted to the king, albeit the word "heirs" be not comprised in the recognizance, obligation, or specialty; or that such person shall allege that he has not any lands, &c. to him descended, but only such lands, &c. as be entailed or given to him by any of his ancestors. Provided (s. 8.) that if any lands, &c. shall be recovered or evicted by any just title without covin, out of the possession of any person chargeable as is above said, then such lands, &c. shall be acquitted of the same debts.

s. 8.

Proviso as to lands evicted.

s. 9.

(s. 9.) that the king may recover said debt against the executors

executors or administrators of any such person indebted as aforesaid, if such executors, &c. shall have assets. *The king may charge executors, &c.*

But by s. 10. if any person of whom any debt shall be demanded, shew in any court where such debt shall be *s. 10.*

demanded, sufficient matter, in law or good conscience, why such person should not be charged with the same; *Proviso as to matter pleaded in discharge of debt.*

and the matter so shewed sufficiently proved, then said court shall have power to allow the proof, and acquit all persons so impleaded. By s. 11. all suits upon any *s. 11.*

debt or duties which shall be due to the king in the court of exchequer, shall be carried on by *capias, extendi* *Process for the king's debt.*

facias, or immediate extent, *subpæna*, attachments, and proclamation of allegiance, or otherwise, as by said court shall be thought expedient; and said court shall have power to hear and determine such suits, and to do execution upon body, lands, and goods.

By s. 12. where any officer or accountant shall be chargeable with any sum of money to the king, and shall, upon the determining of his account, be found in arrear to the king; and that he, his heirs, executors, or administrators, shall not within 6 months after his account finished or debt known, as well when such account shall be finished within 8 years after the death of such accountant or debtor, as in his life time, (he and they having allowance of his and their reasonable petitions) pay all such arrearages, then it shall be lawful for the king, after the 6 months ended, (whether the same shall happen within the life-time of the said accountant, or after his death, as aforesaid) to make sale, by letters patent under the great seal of Ireland, of the lands, &c. of such accountant, &c. as shall be sufficient to satisfy said debt: and if any overplus shall be received upon such sale, the same shall be paid to the accountant, or his heir, by the officer that shall receive the money, without further warrant. And by s. 13. all such sales shall be good against such accountant and his heirs, claiming as heirs, and against the king. *Court of Exc. may order the estate of king's debtor to be sold.* *s. 12.*

Provided (s. 14) *s. 13.* *Such sales give good title.*

that after the death of such accountant, and before such time as any lands, &c. descended unto the heir of such accountant, as heir, shall be sold, a *scire facias* shall be *s. 14.* *Proviso as to issuing a scire facias before sale.*

awarded

awarded out of the exchequer unto the sheriff of the county, &c. where such lands lie, to garnish such heir to shew cause why said lands, &c. to him descended as aforesaid, should not be put to sale for satisfaction of the debts; whereupon if the heir do not within a convenient time upon a garnishment, or two *nihil*s returned, prove unto said court, that the executors or administrators of such accountant have sufficient whereby said debt may be fully satisfied, then, on the expiration of 10 months after such garnishment, or two *nihil*s returned, said lands, or a sufficient part thereof, shall be sold by the king, and applied as herein directed. But by s. 15. this act, as touching only the sale of any lands, &c. shall not extend to any lands, &c. which any person not being privy or consenting unto any intent to defraud the king, shall purchase *bona fide*, and on good consideration, after the death of such accountant, &c. and before any such *scire facias* shall issue. And by s. 16. if the heir of any such accountant, &c. shall be within the age of 21 years, when such process of *scire facias* shall be awarded, then, during his nonage, this act shall not be put in force as touching the selling of the lands, &c. of such heir. But by s. 17. after such heir shall accomplish the full age of 21, all the lands, &c. descended unto such heir, from such accountant, &c. shall be subject to be sold for the payment of the demand of the king, according to this act. By s. 18. nothing herein shall extend to the sale of the lands, &c. of any such heir, for any account or debt, whereof such debtor or accountant shall have a *quietus est* in his life time. By s. 19. if any accountant, &c. shall after he shall become chargeable as herein mentioned, purchase any lands, &c. in his own name, or in the name of any other person in trust for himself, or for any other person to the use of such accountant, &c. and such secret trust or use shall be found by office or inquisition, then the lands, &c. so purchased, shall be taken for satisfaction of the debt of such accountant, &c. and all sales thereof by the king for satisfaction of such debt, shall be of like effect, and done in like manner as before expressed. But by s. 20. it shall be lawful for every

s. 15.

Proviso as to
sale by heir be-
fore *scire facias*.

s. 16 & 17.

Proviso for non-
age of heir.

s. 18.

Proviso as to
debtors obtain-
ing a *quietus*.

s. 19.

Lands purchased
by or in trust
for king's debtor,
liable to debt.

s. 20.

every person whose lands, &c. shall by any office or inquisition be found to be fraudulently conveyed, to have his traverse to such office, &c.; and if it be found with the party that tendereth such traverse, then he shall have the said lands out of the king's hands, without any petition, livery, or *ouster le-main*, or other suit. By s. 21. if the king shall, by any sale had in pursuance of this act, be fully paid the debt, then the sureties of such accountant, &c. shall be discharged from said debt. *Traverse to inquisition allowed.* s. 21. *Proviso as to sureties.*

And by s. 22. nothing herein shall extend to charge any sheriff, escheator, or bailiff of any liberty, or the lands, &c. of any such sheriff, &c. or of their heirs or assigns, for any thing touching their offices, in any other manner than they might have been charged heretofore. *Sheriffs, &c. chargeable as heretofore.* s. 22.

By s. 23. if any officer accountant and chargeable with public money as herein mentioned, shall, contrary to his duty, detain any part of the money by him collected or received, for 6 months after he should have paid off the same, then he shall be charged with interest for the monies so by him detained, after the rate of £12. per cent. per ann. for such time as he shall detain the same; to be recovered by action, suit, or information, or by any of the ways herein contained for recovering debts from public accountants or debtors. *King's debtor chargeable with 12 per cent. for overholding money.* s. 23.

By s. 24. in all actions and suits for the recovery of any debt which shall be due to the king, by reason of any attainder, outlawry, forfeiture, gift of the party, or by any collateral way, it shall be sufficient to shew and allege generally, that the party to whom the said debt did belong such year and day, did give the same debt unto the king, or was attainted, &c. by reason whereof the said debt ought to be paid to the king, without shewing and declaring the circumstances thereof. *Pleading in suits for king's debts.* s. 24.

Provided (s. 25.) that nothing herein shall repeal or alter any of the powers given by the 14 & 15 Car. 2. c. 8. Ir. or by any other law for the improvement or better collection of the king's revenue. *Proviso.* s. 25.

The 25 Geo 3. c. 53. s. 1. Ir. further provides, that when any writ of *scire facias* shall be sued out on behalf of the king, to warn the heir and ter-tenants of any deceased debtor of the king, the attorney or solicitor who shall sue out *25 Geo. 3. c. 53. s. 1. Ir. Copy of scire facias against king's debtor to be published in the Gazette, and 3 other news-papers.*

- out such writ, shall, before the delivery of such writ to the sheriff to whom it is directed, insert a true copy thereof in the Dublin Gazette, and in 3 other public newspapers published within the city of Dublin, or the liberties thereof, and also in every public newspaper which shall be published within the county, or county of a city, to the sheriff whereof such writ shall be directed, except the city of Dublin or liberties thereof, in which case such publication in the Gazette and 3 other newspapers shall be sufficient. And by s. 2. such copies shall be inserted in every such newspaper once in every week for 8 successive weeks, and from the time of issuing such writ until the expiration of 10 weeks, no person shall be required to put in any plea thereto; and from the expiration of such time, no person shall be permitted to plead thereto, save only a plea of misnomer, non-seisin, non-tenure, payment or performance; and no person shall be permitted to file any demurrer to such writ, save only a general demurrer. By s. 3. every attorney or solicitor who shall sue out any such writ of *scire facias* on behalf of the king, and shall omit to comply with the provisions of this act, shall forfeit £100. and be liable to an action at the suit of any party injured by such omission. And by s. 4. if any printer or publisher of any public newspaper, shall refuse or omit to print and publish any such copy of any such writ of *scire facias*, upon the usual payment being tendered to him, he shall for every such refusal, &c. forfeit £500. and be for ever incapable of printing or publishing any newspaper within Ireland, and shall also (being duly convicted thereof) suffer 6 months imprisonment, and be liable to an information at the suit of the king, in his exchequer, for the recovery of any loss sustained by the king by reason of such refusal, &c. By s. 5. every sheriff to whom such writ of *scire facias* shall be directed, shall, 3 times within 6 weeks from the delivery thereof, cause a copy of such writ to be affixed upon the church of the parish wherein the heir of the king's debtor shall reside within his county, &c. or shall have resided within 6 months last past. By s. 6. where any officer or accountant shall
- become

s. 2.

*What pleas may
be pleaded and
when.*

s. 3.

*Penalty for de-
fault of attorney
suing scire faci-
as.*

s. 4.

*Penalty for prin-
ters refusing to
publish, &c.*

s. 5

*Sheriff to post a
copy of writ on
church door.*

s. 6.

become indebted to the king on his account, and shall be bound to the king by bond, recognizance, or writing obligatory; and the sum in which such person shall be indebted to the king, shall not exceed the penal sum in such bond, &c. then a writ or writs of *scire facias quare executionem non*, may be sued in behalf of the king, against such person so indebted, his heirs, executors, administrators, or assigns; and in case judgment shall be given for the king upon such writ, such judgment, or an attested copy thereof, shall be conclusive evidence of the amount of the debt to the king, unless a writ of error shall have been brought to reverse such judgment, within one term next after the same shall have been pronounced, and thereupon such judgment reversed. And by s. 7. where any such person as aforesaid shall be indebted to the king, in any sum greater than the penal sum mentioned in such bond, &c.; or shall be indebted to the king although no such bond, &c. shall have been executed by such person, a commission shall issue out of the court of exchequer, to ascertain the amount of the debt; and such commission and finding thereon, or an attested copy thereof, shall be conclusive evidence of the amount of the debt so due to the king. But by s. 8. it shall be lawful for the said court to allow one traverse, or more, to any such inquisition, upon good cause being made to appear unto said court by any person aggrieved by the same; or set aside such inquisition, and direct a new inquiry, upon like good cause, as well at the suit of the crown, as of any person so aggrieved. By s. 9. when the amount of any debt so due to the king shall be ascertained in manner aforesaid, it shall be lawful for the attorney general to file an information in the exchequer, in the nature of an English bill, for a sale of any lands, &c. or a competent part thereof, of which such debtor shall have been, at any time after the execution of any recognizance, bond, or writing obligatory, seised of any estate of inheritance, in possession, remainder, or reversion; and in case no such recognizance, &c. shall have been executed, then such information may be filed for a sale of any lands, &c. of which such debtor

*Judgment in
scire facias
when conclu-
sive of the
amount of debt,*

s. 7.

*When a com-
mission shall is-
sue out of the
exchequer to as-
certain debt.*

s. 8.

*Traverse to the
inquisition there-
on allowed.*

s. 9.

*When debt as-
certained, infor-
mation by attor-
ney general for
sale of lands.*

debtor shall have been seised of any estate of inheritance in possession, &c. at any time after the time when such person shall have become so indebted or accountable as aforesaid. And by s. 10. it shall be lawful for said court to permit any person claiming any estate or title in or to said lands, &c. paramount to the claim of the king, upon motion, to put in upon oath an answer to such information, disclosing his claim to said lands, &c.

s. 10. *Claims allowed in answer to such information.*

s. 11. But by s. 11, if the king shall be, by any such decree, declared entitled to have a sale of such lands, &c. such decree shall be carried into execution in like manner, and by the same officers, as in cases of decrees upon bills filed for the foreclosure of mortgages by subject against subject. By s. 12. such proceedings for the ascertaining of the debt and sale of the lands of any debtor of the king, as aforesaid, may be carried on, not only in the life time of such debtor, but at any time within 6 years after the decease of such debtor.

s. 12. *Sales under this act how to be.*

Limitation for proceedings under this act.

Certain assignments of debts, to the king, restrained.

7 Jac. 1. c. 15. Eng.

By the 7 Jac. 1. c. 15. Eng. no debt shall be assigned to the king, by or from any accountant to the king, other than such debts as did before grow due originally to the king's debtor or accountant, *bona fide*; and all grants, &c. to the contrary shall be void. No statute similar to this has been passed in Ireland.

Statutes of jeofails extended to king's debts.

4 Ann. c. 16. s. 24. Eng.

6 Ann. c. 10. s. 21. Ir.

It is a provision of the 4 Ann. c. 16. s. 24. Eng. that all statutes of *jeofails* shall extend to all suits in any court of record at Westminster, for recovery of any debt immediately owing, or any revenue belonging to the crown; and shall also extend to all courts of record within the kingdom. And the 6. Ann. c. 10. Ir. contains a similar provision.

Record of king's debt in England transmitted to Ireland, and process thereon.

41 Geo. 3. c. 90. s. 1. U. K.

The 41 Geo. 3. c. 90. U. K. provides, that where upon any account duly audited, declared, or recorded in the court of exchequer in England, or upon any judgment or decree of the same court, any debt or duty shall be due to the king. a copy of such account, judgment, or decree, shall, upon application to said court made on behalf of the king, be forthwith exemplified and transmitted, under the seal of said court, to the court of exchequer in Ireland; which court shall, upon

the said copy so exemplified being laid before them, forthwith cause the same to be inrolled in said court in Ireland; and upon the same being so inrolled, the said court shall cause process to issue for levying and recovering such debts, as well against the person of the debtor, as against his real and personal estate, situate and being in Ireland, as effectually as by the practice of the court of exchequer may now be awarded and issued by said court. And by s. 2. the sheriff, or other proper officer, to whom such process shall be directed, shall be compelled to account to said court for the due execution of such process; and the chancellor and barons of said court shall take care that the monies levied by virtue of such process, shall be paid into the exchequer in Ireland; and the lord high treasurer of Ireland, or lords commissioners for executing that office, shall cause the same to be remitted and paid into the receipt of the exchequer in England. And this act (s. 3 & 4.) provides in the same manner, *e converso*, for the recovery, in England, of debts due to the king in right of the crown of Ireland.

s. 2.

Sheriff to account for due execution, and debt to be remitted to England.

s. 3 & 4.

Debts due to the king in Ireland recovered in England.

The 48 Geo. 3. c. 58. E. & W. contains also a clause which is proper for this place. By s. 3. of this act, if any person shall be arrested by any writ of *capias ad respondendum*, issuing out of any court of record at Westminster, or out of the superior court of record of the counties palatine, or out of any of the courts of great sessions in Wales, at the suit of the king, and the sheriff, or other officer, shall take bail from such person, such sheriff, &c, at the request and costs of the prosecutor of such writ, shall assign to the king the bail bond taken from such bail, by indorsing the same, and attesting it under his hand and seal, in the presence of 2 or more witnesses, which may be done without any stamp, provided the assignment so indorsed be duly stamped before any suit be commenced thereupon; and if such bail bond be forfeited, such process shall thereupon issue as on bonds originally made to the king; and the court in which such bail bond is put in suit may, by rule, give relief to the defendant. This statute does not extend to Ireland.

Bail bonds taken in the king's suits to be assigned.

48 Geo. 3. c. 58. s. 3. E. & W.

CHAP. XXVII.

Of Proceedings in the Courts of Equity.

§ 1.

Remedy in chancery in respect to the debts or contracts of lunatics.

43 Geo. 3. c. 75.
s. 1. E. & I.

s. 2.

s. 3.

Leasing powers may be executed by committees of lunatics.

THE statutes which relate to the peculiar jurisdiction of the court of chancery in respect to infants, have been already stated in the preceding parts of this digest: I proceed therefore to another branch of the peculiar jurisdiction of this court, which regards *lunatics*. By the 43 Geo. 3. c. 75. s. 1. E. & I. it shall be lawful for the lord chancellor of the united kingdom, and of Ireland, respectively, being entrusted, by virtue of the king's sign manual, with the care and commitment of the custody of the persons and estates of persons found lunatic or of unsound mind, and incapable of managing their affairs, by inquisition taken in England and Ireland respectively, to order the freehold and leasehold estates of such persons to be sold, or charged and incumbered by way of mortgage, or otherwise, for the raising such sum of money as shall be necessary for payment of debts, and for performing the contracts or engagements of any such persons, and the costs attending the same, and attending such sale, &c. and to direct the committees of the estate of such persons to execute, in the name and on behalf of such persons, conveyances of the estates to be sold, &c. and to do all such acts as shall be necessary to effectuate the same, in such manner as such chancellor respectively shall direct. And by s. 2. in case there shall be any surplus of money to be raised by any such sale, after answering the purposes aforesaid, the same shall be applied as the estate sold would have been applied if this act had not been made. By s. 3. every power of leasing freehold and copyhold lands, &c. vested in such persons so found lunatic, &c. having a limited estate only, shall be executed by the committees of the estates

estates of such persons, under the direction of the lord chancellor, &c. And by s. 4. where persons so found lunatic, &c. are seised or possessed of and entitled to freehold or copyhold estates in fee or in tail, and an absolute interest in leasehold estates, it shall be lawful for the lord chancellor, &c. to order the committees of the estate of such lunatics to make such leases of such estates according to the interest therein, and to the nature of the tenures of such estates, for such terms of years, and subject to such rents and covenants as the lord chancellor, &c. shall direct. And by s. 5. all acts done by such committees of the estates of such lunatics, by virtue of this act, and the order of the lord chancellor, &c. shall be binding against the said lunatics, &c. and all persons claiming by, through, or under them, as if the persons so found lunatic, &c. had been of sound mind, and had personally done such acts. Provided (s. 6.) that nothing in this act shall subject any part of the estates of any person found lunatic, &c. to the debts or demands of his creditors, otherwise than as the same are now liable by due course of law.

s. 4.

The chancellor may direct committees of estates of lunatics to make leases thereof.

s. 5.

Such acts of committees binding.

s. 6.

Proviso.

II. Next as to the superintendence of *charities*: The 43 Eliz. c. 4. s. 1. Eng. recites, that lands, &c. goods and stocks of money, have been given and appointed for relief of aged, impotent, and poor people; for maintenance of sick and maimed soldiers and mariners; schools of learning, free schools, and scholars in universities; for repair of bridges, ports, havens, causways, churches, sea-banks, and highways; for education and preferment of orphans; for stock or maintenance for houses of correction; for marriages of poor maids, for help of young tradesmen, handicraftsmen, and persons decayed; and for relief or redemption of prisoners; and for aid of poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes; which lands, &c. have not been employed according to the charitable intent of the givers; and for remedy thereof enacts, that it shall be lawful for the lord chancellor, and for the chancellor of the duchy for lands within the county palatine of Lancaster, to award commissions

§ 2.

Powers of commissioners of charitable uses.

43 Eliz. c. 4. s. 1. Eng.

sions

Inquiry for discovery of such uses, &c.

s. 2.

Proviso as to certain colleges, &c.

s. 3.

Proviso as to special visitors.

s. 4.

Ordinary's jurisdiction saved.

s. 5.

Who excluded from being commissioners or jurors.

s. 6.

Proviso as to purchasers.

sions under the great seal of England, or seal of the county palatine, to the bishop of every diocess, and to his chancellor, and to other persons, authorizing them or any 4 of them, to inquire, as well by the oaths of 12 men of the county, as by all other lawful ways, of all such gifts as aforesaid, and of the abuses, breaches of trusts, negligences, mis-employments, not-employing, concealing, defrauding, mis-converting or mis-government of any lands, &c. goods or stocks, given for any of the charitable uses before rehearsed. And the commissioners, upon calling the parties interested, shall make inquiry by the oaths of 12 men, or more, of the county, (whereunto the parties interested may take their challenges) and upon such inquiry set down such orders, judgments, and decrees, as the said lands, &c. goods and stocks, may be duly employed for such charitable uses for which they were given: Which orders, &c. (not being repugnant to the orders, statutes, or decrees of the donors,) shall stand good, and be executed, until the same be altered by the lord chancellor, or the chancellor of the county palatine of Lancaster, respectively, upon complaint by any party grieved. But by s. 2. this act shall not extend to any lands, &c. goods or stocks given or which shall be given to any college, hall or house of learning within the universities, or to the colleges of Westminster, Eton, or Winchester, or to any cathedral or collegiate church: And by s. 3. this act shall not extend to any city or town corporate, or to any lands or tenements given to the uses aforesaid within any such city or town corporate, where there are governors appointed; neither to any college, hospital, or free-school, which have special visitors, governors, or overseers, appointed by the founders. And by s. 4. this act shall not be prejudicial to the jurisdiction of the ordinary. By s. 5. no person that shall have any of the said lands, goods or stocks, or shall pretend title thereunto, shall be named a commissioner, or a juror, or shall serve in the same. And it is further provided (s. 6.) that persons which shall purchase upon valuable consideration of money or land, any estate or interest in any lands, &c. goods or chattels, that shall be given to any the

the charitable uses abovementioned, without fraud, having no notice of such charitable use, shall not be impeached by any decrees or orders of the commissioners: and yet the commissioners may make decrees, &c. for recompense to be made by any persons, who being put in trust, or having notice of the charitable uses abovementioned, shall break the same trust, or defraud the same uses above mentioned, and against the heirs, executors, and administrators of them, having assets in law or equity. By s. 7. this act shall not give power to any commissioners to make orders concerning any lands, &c. granted unto the queen, to king Henry VIII. king Edward VI, or queen Mary: And yet if any such lands, &c. or any profit out of the same, have been given for any the charitable uses before expressed, since the beginning of her majesty's reign, the commissioners may proceed to inquire, and make orders and decrees according to this act, the last mentioned proviso notwithstanding. By s. 8. all orders and decrees of the commissioners shall be certified under the seals of said commissioners, either into the chancery of England, or into the chancery within the county palatine of Lancaster, within such time as shall be limited in the commissions. And by s. 9. the lord chancellor, and the chancellor of the duchy, may take order for the due execution of the said decrees and orders. By s. 10. if after any such certificates made, any persons shall find themselves grieved with any of the said orders or decrees, it shall be lawful for them to complain to the lord chancellor, or chancellor of the duchy, according to their several jurisdictions: And the said lord chancellor, or chancellor of the duchy, may proceed to the hearing and determining thereof, and annul, or alter the said orders, &c. of the commissioners, or any 4 or more of them, according to the intent of the donors; and shall tax costs against such persons as shall complain without just cause. The 10 Car. 1. st. 3. c. 1. Ir. is in some measure analogous, which provides, that all archbishops and bishops, and their successors, shall from the time of any grant or estate to them, of any lands, &c. unto the use or upon trust

Powers of commissioners in cases of breach of trust.

s. 7.

Proviso as to certain crown lands.

s. 8.

Order of commissioners to be certified.

s. 9.

Commissioner's decrees executed.

s. 10.

Appeal from commissioner's decrees.

Costs of such appeals.

10 Car. 1. st. 3. c. 1. Ir.

*Bishops, &c.
compellable in
chancery, or by
privy council, to
execute trusts
for charitable
purposes.*

**Some words
must be omit-
ted or supplied
to render this
act as printed
grammatical.*

*3 Geo. 3. c. 18.
Ir.*

*40 Geo. 3. c. 75.
Ir.*

*28 Geo. 3. c. 15
Ir.*

*46 Geo. 3. c. 122.
Ir.*

*Commissioners
of charitable do-
nations, &c. in
Ireland.*

*3 Geo. 3. c. 16.
s. 17. Ir.*

*Trustees, &c.
of charities may
surrender.*

trust for the erection, maintenance, or support of any college, school, lecture in divinity, or in any of the liberal arts and sciences, or for the relief and maintenance of any poor, distressed, or impotent persons; or for the building, re-edifying, or maintaining in repair of any church, college, school, or hospital; or for the maintenance of any minister and preacher; or for the erection, building, maintenance, or repair of any bridges, causeways, cashes, paces and highways, or for other like lawful and charitable use;* be compelled by way of *subpœna* in chancery, or by petition before the lord deputy and privy council at the council board, to execute the said trusts and uses, according to the true intent of the charters, deeds and conveyances to them: saving to all persons, &c. their heirs and successors, other than the donors and grantors, their heirs and successors, all such right, &c. in and to the said lands, &c. as they might have had if this act had not been made.

The 3 Geo. 3. c. 18. Ir. (amended by the 40 Geo. 3. c. 75. Ir.) which provides for the better discovery of charitable donations and bequests, has been already stated (vol. 1. p. 663.) And the 46 Geo. 3. c. 122. Ir. is to be here referred to, which revives the 28 Geo. 3. c. 15. Ir. and enables the lord lieutenant of Ireland to appoint 6 commissioners for inquiring into the several funds and revenues granted for the purposes of education, and into the state and condition of all schools in Ireland, in conjunction with 5 other of the commissioners of charitable donations incorporated under the 40 Geo. 3. c. 75. Ir. And the 3 Geo. 3. c. 16. s. 17. Ir, recites, that several persons have been named in acts of parliament governors or trustees of charitable foundations; and that such trustees, &c. may be prevented attending the business of such charitable foundations by age, infirmities, or other affairs; and therefore enacts, that it shall be lawful for any such governor, &c. named or elected or to be elected under the said acts, to surrender under his hand and seal, his place of governor, &c. on giving one month's notice in writing to the governors of such corporation, of which he is a member, corporately

assembled. The 4 Ann. c. 14. Eng. contains several provisions in respect to the authority and duty of the court of chancery, upon the issuing of letters patent for collecting of charity money, called briefs, which appear to be obsolete or out of use.

III. As to the summary jurisdiction given to the court of chancery, by the several statutes concerning bankrupts; these acts have been already abridged and reviewed in a former part of this work: But it is proper to be here observed, that by the 19 & 20 Geo. 3. c. 25. s. 10. Ir. the commissioners to be appointed by the king for hearing causes in the absence of the lord chancellor, lord-keeper, or lords commissioners for the custody of the great seal, or any two or more of them, shall and may hear and determine all petitions and motions in cases of bankrupts, and make all such orders in all matters respecting the bankrupt laws in the absence or sickness of the lord chancellor, &c. and in all cases where the lord chancellor, &c. shall be interested, as fully as the lord chancellor, &c. might do if present, or in no wise interested therein. And the 47 Geo. 3. st. 2. c. 74. U. K. is to be here stated, which provides, that when any person being at the time of his death a trader within the meaning of the laws relating to bankrupts, shall die seised of or entitled to any estate or interest in lands, &c. or other real estate, which he shall not by his last will have charged with or devised subject to the payment of his debts, and which before the passing of this act would have been assets for the payment of his debts due on any specialty in which the heirs were bound; the same shall be assets to be administered in courts of equity, for the payment of all just debts due on simple contract as on specialty, and the heir or devisee of such debtor shall be liable to the same suits in equity, at the suit of any of the creditors of the debtor, as they were before this act liable to at the suit of creditors by specialty in which the heirs were bound: Provided that in the administration of assets by courts of equity under this act, all creditors by specialty in which the heirs are bound, shall be paid the full amount of the debts due to them, before any of

§ 3.

Commissioners for hearing causes in the absence of lord chancellor, &c. may hear bankrupt motions.

19 & 20 Geo. 3. c. 25. s. 10. Ir.

47 Geo. 3. st. 2. c. 74. U. K.

Estates of traders liable in the hands of their heirs or devisees to their debts.

Courts of equity in administering such assets to prefer specialty creditors.

s. 2.

the creditors by simple contract or by specialty in which the heirs are not bound, shall be paid any part of their demands. And provided (s. 2.) that nothing in this act shall repeal or alter the (bankers act in Ireland) 33 Geo.2.

Proviso.

c. 14. Ir. *vide* vol. 1. p. 552.

§ 4.

Mortgagor not giving notice in writing to mortgagee of prior judgments, &c. barred of equity of redemption.

4 & 5 W. & M. c. 16. s. 2. Eng.

IV. Next as to the statutes which concern courts of equity in common: it was reserved for this place to state the provisions of those which relate to their jurisdiction in respect to *mortgages*. By the 4 & 5 W. & M. c. 16. s. 2. Eng. if any person shall, for any valuable consideration, acknowledge a judgment, statute, or recognizance, and shall after mortgage his lands or tenements to a second creditor, or in trust for him, and shall not give notice of the said judgment, &c. under his hand, before the execution of the mortgage; unless such mortgagor or his heirs, upon notice given by the mortgagee, his heirs, executors, administrators, or assigns, under hand and seal, attested by 2 witnesses, of such former judgment, &c. shall, within 6 months, pay off the said judgment,

Unless the same be vacated.

&c. and cause the same to be vacated by record, then such mortgagor, his heirs, &c. shall have no remedy against the mortgagee, his heirs, &c. in equity, or else where, for redemption of the said lands, &c. And by

s. 3.

Subsequent mortgagee without notice of prior, shall hold free from equity of redemption.

s. 3. if any person who shall mortgage any lands or tenements for security of money lent or due, or for other valuable consideration, and shall again mortgage the same lands, &c. to any other person for valuable consideration, and (the former mortgage being in force) shall not discover to the second mortgagee the former mortgage,

s. 4.

Subsequent mortgagees may redeem the former.

under his hand; then said mortgagor, his heirs, &c. shall have no relief or equity of redemption against the second mortgagee, his heirs, &c. But by s. 4. if there be more than one mortgage, at the same time, of the same lands and tenements, the late or under mortgagees, their heirs, &c. shall have power to redeem any former mortgages. And by s. 5. nothing in this act shall bar

s. 5.

Right of dower saved.

any widow of any mortgagor from her dower, who did not legally join with her husband in such mortgage, or otherwise lawfully bar herself from her dower. The 9 W. 3.

9 W. 3 c. 11. Ir.

c. 11. Ir. is the corresponding statute in Ireland. It is

a provision

a provision of the 7 Geo. 2. c. 20. Eng. (which statute has been already in part stated, Book 2. c. 6.) that where any bill shall be filed in equity by any person claiming any interest in lands, &c. under any mortgage, to compel the defendant to redeem the same, and in default of payment to foreclose the defendant; the court of equity, upon application by the defendant having a right to redeem, and upon his admitting the title of the plaintiff, shall at any time before such cause shall be brought to hearing, make such order or decree therein, as such court might have made in case such cause had been regularly brought to hearing. No statute in Ireland contains any similar provision. But the 11 & 12 Geo. 3. c. 10. s. 1. Ir. gives to the courts of equity in Ireland a summary power or jurisdiction for enforcing the payment of interest upon mortgages. This statute provides, that in all cases where one year and a half's interest shall be due, a court of equity shall appoint a receiver, to receive such part of the rents of the mortgaged premises as shall be sufficient to pay such arrear of interest, and also the accruing interest of the said mortgage money, from time to time, one half year when the other shall become due, until the whole of such interest shall be discharged, together with such fees or salary as shall be appointed by said court for such receiver, as also the necessary costs out of pocket of such application. And by s. 2. such order shall be made upon petition and affidavit, after reasonable time given to shew cause, and whether any bill has or has not been filed relative to the said mortgage. This statute is peculiar to the law of Ireland. And for making the process in courts of equity more effectual against mortgagors who abscond and cannot be served therewith, and against persons who being served refuse to appear; the 7 Geo. 2. c. 14. s. 1. Ir. provides, that upon all bills of foreclosure, where it shall appear to the respective court (of chancery or exchequer) where such bill is filed, by affidavit, that the parties necessary to be served in such suit abscond, or are out of the kingdom, so as they cannot be served with process to compel them to appear and answer such bills,

7 Geo. 2. c. 20.
s. 2. Eng.

*On bills to fore-
close, the court,
on defendant's
request, may de-
cree before a fi-
nal hearing.*

11 & 12 Geo. 3.
c. 10. s. 1. Ir.

*Where one year
and a half's in-
terest due on
mortgage, court
may appoint a
receiver.*

s. 2.

*Such order to be
made on petition
and affidavit, af-
ter time given to
shew cause.*

7 Geo. 2. c. 14.
s. 1. Ir.

*On bills of fore-
closure where
necessary parties
cannot be served
with process,
what service may
be substituted.*

Bill taken pro confesso after 4 terms.

s. 2.

What service substituted where defendant has an estate in Ireland, but is not resident.

s. 3.

Time allowed to make defence before decree final.

but have been in the kingdom within 12 calendar months next preceding such affidavit, it shall be lawful for the said courts to order that service of the tenants of the mortgaged premises, or of the known agent or receiver of the rents, &c. and at the last place of abode of such person so absconding or being out of the kingdom, with process of *subpæna* to answer such bill, shall be deemed good service of such party; and upon such party neglecting to appear, or not answering such bill, in 4 terms after such service, the plaintiff may proceed to have such bill taken *pro confesso*, as if such defendant had appeared upon such service; and the court shall make such decree therein as the nature of the case will permit, and from time to time make orders for the carrying such decree into execution. And by s. 2. if any person shall file a bill of foreclosure in any court of equity in this kingdom, against any person having an estate, and not being resident in this kingdom; in case it shall appear by affidavit to such court, that such defendant is out of this kingdom, and hath been so for 12 calendar months next preceding such affidavit, it shall be lawful for such court to order, that service of a *subpæna* to appear and answer, upon the steward, agent, receiver, or manager of such defendant, and leaving a copy thereof at the last place of abode in this kingdom of such defendant, (if any place of abode he ever had, and the same can be found) be deemed good service of such defendant; and upon such defendant neglecting to appear, or not answering such bill, within 4 terms after such service, the plaintiff may proceed in such suit to have such bill taken *pro confesso*, as if such defendant had appeared upon such service; and the court shall make such decree therein as the nature of the case will permit, and from time to time make further orders for carrying such decree into execution. Provided (s. 3.) that where any decree shall be made as herein before mentioned, if the defendant, or his legal representative, shall, within 2 years after personal service of such decree, or in case there shall not be personal service, then within 7 years after such decree, pay, or give such security

rity as the court shall approve of, to pay the costs which the plaintiff has necessarily been at, and apply to the court to be let in to appear and answer such bill, the court shall permit him to appear, answer, and make defence; and in such case there shall be the same proceedings, decree, and execution, as if the defendant had originally appeared, and the proceedings had been then newly begun: and if no defence be made within the times before mentioned, such decree shall be final.

And by s. 4. if any bill be taken *pro confesso* for default of appearance according to the directions aforesaid, it shall be lawful for any plaintiff, after such bill is taken *pro confesso*, to give notice, as herein directed to compel an appearance, that he intends to examine witnesses in 2 months after such notice; which notice being given, and the service thereof made appear by affidavit to be lodged with the proper officer, and the time limited being run out, the plaintiff may, by leave of the court, examine witnesses *de bene esse* as well to the proof of exhibits, as to any other matter; but such depositions shall not be published without the special order of the court. And by s. 5. in case after such bill be taken *pro*

s. 4.

Testimony of witnesses in such cases perpetuated.

confesso, the defendant do come in and answer, and in case any of the witnesses examined on behalf of such plaintiff shall die, and that the plaintiff would have had reason to examine such person if issue had been joined in the cause, then the deposition of such person shall be effectual as if issue had been joined, and shall be made use of on the hearing: but the several witnesses who were examined, and are living, shall be re-examined, not only to such matters as they were formerly examined to, but to such other matters which may arise from the nature of the defence. But by s. 6. so soon as the wit-

s. 5.

Depositions of such witnesses read after their death, as if issue regularly joined.

nesses living be again examined, and their depositions taken, then their former depositions shall stand suppressed, and shall not be copied or published. By s. 8.

s. 6.

Depositions of living witnesses void if defence in due time.

all persons who shall, at the time any decree in pursuance of this act shall be made, be under the age of 21 years, or of non sane memory, or *feme covert*, they shall have 2 years from the service of such decree after the

s. 8.

Saving for infants, &c.

removal

removal of such disability, to make their defence, and shew cause against the same.

§ 5.

No injunction to stop proceedings at law for rent shall issue for want of answer, without affidavit verifying bill.

5 Geo. 2. c. 4. s. 5. Ir.

25 Geo. 3. c. 51. s. 1. Ir.

No trial stayed by injunction, save for equity confessed.

s. 2.

But plaintiff may declare, &c. notwithstanding such injunction.

Unless the court shall order otherwise.

§ 6.

Tenants holding under leases for lives renewable for ever, how relieved in equity against lapse.

19 & 20 Geo. 3. c. 30. s. 1. Ir.

V. The statutes which relate to the jurisdiction of the courts of equity in awarding *injunctions* to stay proceedings in ejectments brought for non-payment of rent, have been already stated (Book 3.c. xi.) But the 5 Geo. 2. c. 4. s. 5. Ir. is to be stated here, which provides, that where any ejectment is brought on any of the statutes for non-payment of rent, or any distress is taken, or action brought, for arrears of rent; and the tenant files a bill in any court of equity, to stop the proceedings at law for the recovery of such rent; no injunction shall issue for want of an answer, unless the plaintiff shall verify by affidavit the material allegations in such bill. And to prevent vexatious injunctions, the 25 Geo. 3. c. 51. s. 1. Ir. further provides, that in all injunctions which shall issue out of any court of equity, to stay any defendant from proceeding at law, (except upon equity confessed in the answer of such defendant) there shall be inserted a proviso, that such defendant shall be at liberty to call for a plea, and to proceed to trial thereon, and for want of a plea to enter up judgment, but execution to be stayed. And by s. 2. if at the time such injunction shall be issued, the defendant hath not filed any declaration at law, he shall be at liberty to file a declaration, and to proceed thereon in manner aforesaid. Provided that nothing herein shall restrain courts of equity from making any order to stay any defendant from proceeding to trial at law, upon sufficient grounds appearing to them. No English statute contains any provisions similar to those of the 5 Geo. 2. c. 4. and 25 Geo. 3. c. 51. here stated.

VI. The jurisdiction of the courts of equity in Ireland upon *bills filed by tenants for the renewal of their leases*, is regulated by the 19 & 20 Geo. 3. c. 30. Ir. which is intituled "An act for the relief of tenants holding under leases for lives containing covenants for perpetual renewals;" and which recites, that great parts of the lands in this kingdom are held under leases for lives, with covenants for perpetual renewals upon payment of certain fines therein respectively mentioned for

for each renewal; and many such leases are settled to make provision for families and creditors; and that from various accidents and causes such tenants, and those deriving under them, have frequently neglected to pay or tender such fines within the times prescribed by such covenants; and that it has been for a long time a received opinion, that courts of equity would in such cases relieve against the lapse of time, upon giving an adequate compensation to the persons to whom such fines were payable, or their representatives; to the end, therefore, that such interests may not be defeated by a mere neglect, where no fraud appears to have been intended, upon making full satisfaction to the lessors, or those deriving under them, this statute therefore declares and enacts, that courts of equity, upon an adequate compensation being made, shall relieve such tenants and their assigns against such lapse of time, if no circumstance of fraud be proved against them; unless it shall be proved that the persons entitled to receive such fines, had demanded such fines from such tenants, &c. and that the same had been refused or neglected to be paid within a reasonable time after such demand. *In what case barred of relief.*

Provided (s. 2.) that in case the landlord shall find any difficulty in discovering his tenant, or the assignee of such tenant, so as to make a demand, then a demand made of said fine on the lands from the principal occupier of the same, together with a notice of such demand to be inserted for 2 months in the London and Dublin gazettes, shall be considered a demand within this act. *s. 2.*

Demand of renewal fine how made, where difficult to discover tenant.

VII. Next as to *bills of discovery*, a jurisdiction is given to the courts of equity in England, for enforcing a discovery in respect to benefices belonging to papists, by the 12 Ann. st. 2. c. 14. Eng. which statute has been already in part stated, (Vol. 1, p. 432.) But as this statute concerns, peculiarly, the universities of England, I shall content myself with referring to it in this place. The provisions of the popery laws of Ireland, which related to the filing of bills for the discovery of trusts for papists, have been already referred to (Book 2. c. ix.): But the following clauses of the 1 Geo. 2. c. 23. Ir. *§ 7.* *Bills of discovery.*

1 Geo. 2. c. 23.
s. 2. 1r

Clerk of patron
recovering in
quare impedit
may bring bill
for account of
profits.

c. 23. It seem to be proper for this place. By s. 2. of this act, where the king, or any other patron, shall recover in any action of *quare impedit*, it shall be lawful for the clerk of the king or other patron, and for the executors and administrators of such clerks, to prefer a bill in the court of Ch. or Exc. against the clerk defendant in the said *quare impedit*, his executors or administrators, for an account of the profits of the benefice so recovered, from the time the defendants in *quare impedit* shall be returned to have been summoned to appear in the said suit on which such recovery shall be had; and the said court of Ch. or Exc. shall decree a reasonable value of the said profits against such clerk defendant, his executors, &c. unless such clerk defendant, his executors, &c. shall, before such suit, voluntarily make oath in writing before the ordinary of the diocess in which such living shall lie, what he set the same for, or made thereof *bona fide*, and shall offer to account for the same accordingly, and make payment; in which case the clerk of the party recovering shall be concluded by such oath, and receive the mesne profits accordingly, subject to the deductions in this act contained. Provided (s. 4.) that where judgment shall be given upon demurrer, and the defendant in *quare impedit* shall not acquiesce in said judgment, but shall bring a writ of error to another court, in such case the clerk defendant shall upon affirmation of the judgment in that court, be accountable in manner aforesaid to the clerk of the plaintiff for the profits of such benefice so recovered, from the time of obtaining the judgment upon demurrer. And by s. 5. it shall be lawful for the bishop or ordinary of the diocess, or for the guardian of the spiritualities, to allocate by any writing under hand and seal, yearly, during the time that such benefices shall be contested, any sum of money not exceeding £60. *per ann.* except where there was one curate, or more, ordinarily employed in the parish before the vacancy, in which case the bishop may make a reasonable allowance for such curate: Provided such allowance to every such curate does not exceed £30. *per ann.* (if such curate shall be licensed, and actually employed in

s. 4.

On affirmation
of judgment on
demurrer, clerk
defendant in
quare impedit
accountable from
the judgment.

s. 5.

What allowance
ordinary may
make to curate
during contest.

in such cure during the suit) unless the 3d part of the annual profits of such benefice shall exceed that sum; in which case the ordinary may allow any sum not exceeding the 3d part of the annual profits, and so proportionably for every less space of time; to be paid to such clerk defendant having actual cure of souls, and serving the cure by himself, or his curate lawfully licensed by the bishop, &c. or to such other curate who shall be duly appointed to serve the cure thereof in case of vacancy and sequestration; which said allocation and service of the cure being certified under the hand and seal of the said bishop, &c. such sum shall be allowed in the aforesaid account of the said profits.

VIII. The 36 Geo. 3. c. 90. Eng. may be referred to § 8. that branch of the jurisdiction of a court of equity, which respects the control of *trustees, trust monies and estates*. This statute provides, that when any person, in whose name any part of the stocks and annuities transferrable at the bank of England shall be standing as a trustee, or the legal representative of such person being deceased, shall be absent out of the jurisdiction, or not amenable to the process of the courts of chancery and exchequer, or shall be a bankrupt, or lunatic, or shall refuse to transfer the stock, &c. so vested in him, or to receive or pay over the dividends of such stock, &c. to the person beneficially entitled thereto, or it shall be uncertain whether such trustee or representative is living or dead; in such cases it shall be lawful for the said courts, in any cause depending therein, to order that the accountant general, or the secretary or deputy secretary of the governor and company of the bank of England, do transfer in the books of said company, such stock, &c. either into the name of the accountant general of the court of chancery, or of the deputy remembrancer of the court of exchequer, in trust in such cause, or otherwise, to and into the name of the person beneficially entitled to such stock, &c. as to said courts shall seem fit; and also to order that the said accountant general, secretary or deputy secretary of said bank, do receive and pay over the dividends of such stock, &c.

When trustees in whose names stock shall be standing at the bank shall be absent or bankrupts, the court of Ch. or Exc. may order stock to be transferred, and dividends paid.

36 Geo. 3. c. 90. s. 1. Eng.

as the said courts shall direct; and as often as it shall happen that one or more only, and not all or both of such trustees, or personal representatives, shall be so absent, or not amenable to such process as aforesaid, or a bankrupt, or lunatic, or shall so refuse as aforesaid, or it be uncertain whether one or more of such trustees or representatives is or are living or dead, in such cases it shall be lawful for said courts to order that the other trustees and representatives who shall be ready and qualified to act, do transfer such stock, &c. into the name of such person as aforesaid, and receive and pay over the dividends of such stock, &c. as said courts shall direct. And by s. 2. as often as any person

If bankrupts refuse to transfer stock standing in their own right, the chancellor may order it to be transferred to the assignees.

s. 2.

s. 3.

Stock standing in the name of lunatics or their committees may be ordered by lord chancellor to be transferred, &c.

s. 4.

Proviso.

39 & 40 Geo. 3. c. 56. s. 1. Eng.

Where money under control of a court of equity is subject to be invested in the purchase of premises to be settled in such manner that it would be competent to bar estates tail, &c. court may

shall be declared bankrupt, having any part of such stock, &c. standing in his name in his own right, it shall be lawful for the lord chancellor, on the petition of the assignees chosen under said commission, to order the said accountant general, secretary or deputy secretary of said bank, to transfer the said stock, &c. to and into the name of the said assignees, and also to receive and pay over the dividends of such stock, &c. as the lord chancellor, &c. shall direct. And by s. 3. where any such stock, &c. shall be standing in the name of such lunatic in his own right, or in the name of the committee of his estate, in trust for said lunatic, or as part of his property, it shall be lawful for the lord chancellor to order the accountant general, secretary or deputy secretary of said bank, to transfer such stock, &c. into the name of any new committee, or otherwise, and to receive and pay over the dividends thereof, as the lord chancellor shall direct. And by s. 4. this act shall be a full indemnity to the governor and company of said bank of England, their officers and servants, for all things to be done pursuant thereto. And the 39 & 40 Geo. 3. c. 56. Eng. may be also here stated: This statute provides, that where money under the control of any court of equity, or of or to which any individuals as trustees are possessed or entitled, shall be subject to be invested in the purchase of freehold or copyhold hereditaments, or both, to be settled upon any person in such manner that it would be competent, in case such money had been

been invested in the purchase of real estates, for the person who would be the tenant of the first estate-tail therein, either alone, or together with the owners of the particular preceding estates therein, (if any) by deed, fine, or common recovery, or other lawful act, in the case of freehold hereditaments, or by surrender and recovery, or either of them, or other lawful act, in the case of copyhold hereditaments, to bar the first estates-tail, and the rights of all persons in remainder; it shall not be necessary to have such money invested in lands or hereditaments, in order that such estates-tail and remainders over may be so barred; but it shall be lawful for the court of chancery, or such court of equity under the control of which such money shall be, and in the case of trustees for the court of chancery, in a summary way, upon petition of the person who would be tenant of the first estate-tail, and of the persons who would be the owners of the antecedent particular estates, (if any) in the lands, &c. in case the same were purchased, (such petitioners being adults, and in case where any of the parties is a feme covert, she being first examined in court, or upon a commission, and consenting,) to order the monies subjected to such trusts to be paid to the petitioners, or any of them, or to be applied in such manner as the petitioners shall appoint, and the court shall approve of. And by s. 2. where monies to be laid out in the purchase of hereditaments to be settled as aforesaid, shall be invested in government, or real or other securities, such securities shall, for the purposes of this act, be considered as money, and shall be disposed of under an order of the respective courts aforesaid, made in a summary way upon the petition of such persons, and with such examination and consent, where necessary as aforesaid, in such manner as monies subjected to be laid out in the purchase of hereditaments, to be settled as aforesaid, are herein-before authorized to be disposed of. No similar statutes have been passed in Ireland.

order the money to be paid or applied as they shall appoint.

s. 2.

Securities for such money may be also transferred by order of such court.

IX. It is also a part of the province of a court of equity, to obviate the inconveniences arising from the disabilities of parties necessary to conveyances in cases of trusts, mortgages, and renewals of leases. The

§. 9.

7 Ann.

Minors being trustees, &c. may, by order of Ch or Exc, execute conveyances.

7 Ann. c. 19. s. 1. Eng.

*not in 4 Geo. 2 c. 10. Eng. or 5 Geo. 2 c. 8. Ir. *infra*.

s. 2.

And compellable so to do.

4 Geo. 3. c. 16. Eng.

2 Geo. 1. c. 6. Ir.

4 Geo. 2. c. 10. Eng.

5 Geo. 2. c. 8. s. 1 & 2. Ir.

Similar provision in respect to idiots, &c.

29 Geo. 2. c. 31. c. 1. Eng.

Infants, lunatics, and feme covert, enabled to surrender leases in order to renew the same.

7 Ann. c. 19. Eng. for this purpose provides, that it shall be lawful for any person under the age of 21 years, by the direction of the court of chancery [*or exchequer,] signified by an order made upon hearing all parties concerned, on the petition of the person for whom such infant shall be seised or possessed in trust, or of the mortgagor, or guardian of such infant, or person entitled to the monies secured by or upon any lands, &c. whereof any infant shall be seised or possessed by way of mortgage, or of the person entitled to the redemption thereof; to convey such lands, &c. in such manner as the said court of chancery or exchequer shall by such order direct, to any other person; and such conveyance shall be as effectual, as if such infant were of full age. And by s. 2. every such infant being only trustee or mortgagee, shall be compelled by such order to make such conveyance, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust estates or mortgages. The 4 Geo. 3. c. 16. Eng. contains the same provisions with respect to the duchy of Lancaster, the counties palatine of Chester, Lancaster, and Durham, and the principality of Wales. The 2 Geo. 1. c. 6. Ir. is the corresponding statute in Ireland. The 4 Geo. 2. c. 10. Eng. and 5 Geo. 2. c. 8. s. 1. Ir. give to the chancellor the same powers in respect to persons being idiots, lunatics, or *non compos mentis*, and their committees, as the 7 Ann. c. 19. s. 1. and 2 Geo. 1. c. 6. Ir. *supra*, do to the courts of chancery and exchequer in respect to infants. To this head also is to be referred the 29 Geo. 2. c. 31. Eng, which provides, that where any person under 21 years, or any lunatic, or feme covert, shall become interested in or entitled to any lease made by any person, &c. for any life or lives, or for any term of years, either absolute, or determinable upon the death of one person or more, or otherwise, such person under age, or his guardian, or other person on his behalf, and such lunatic, or his guardian or committee, or other person on his behalf, and such feme covert, or any person on her behalf, may apply to the court of chancery of Great Britain, the court of exchequer, the courts of equity of the counties palatine, or the courts of great sessions of Wales,

Wales, by petition or motion in a summary way; and by the order of said courts made upon hearing all parties, such person under age, and such lunatic, or person appointed by said courts, and such feme covert, by deed only, without levying any fine, shall be enabled to surrender such lease, and accept in the name and for the benefit of such person under age, lunatic, or feme covert, new leases of the premises surrendered, for such lives, or years determinable upon lives, or term absolute, as was mentioned in such lease so surrendered, at the making thereof, or otherwise, as said courts shall direct.

By s. 2. all money and other consideration advanced by such guardian or person, as a fine for renewal of such lease, and all reasonable charges, shall be paid out of the effects of the infant or lunatic for whose benefit the lease is renewed, or shall be a charge upon the leasehold premises with interest as the said courts shall direct; and concerning leases to be made upon surrenders by femes covert, unless the fine and charges be otherwise paid or secured, the same, with interest, shall be a charge upon such leasehold premises, for the use of such person who shall advance the same. By s. 3. the leases renewed shall be to the same uses, and liable to the same trusts, charges, dispositions, devises, and conditions as the leases surrendered. And by s. 4. every surrender, and lease granted thereupon, shall be as valid as if made by a person of full age, sane mind, or not married.

And the 11 Geo. 3. c. 20. s. 1. Eng. further provides, that where any lunatic shall be entitled to renew any lease for life or lives, or for any term of years absolute or determinable on the death of one person or more, or otherwise, it shall be lawful for such lunatic, or his guardian or committee of his estate, in his name, by the direction of the lord chancellor, signified by an order made on the hearing of all parties upon petition, in a summary way, to accept of a surrender of such lease; and to execute to any person, &c. a new lease of the premises comprised in such lease, for such lives, or years determinable upon lives, or absolute, as were contained in such lease at the making thereof, or otherwise, as the

lord

s. 2.

Fine and charges of renewal to be a charge on the estate.

s. 3.

New leases to be to the former uses.

s. 4.

11 Geo. 3. c. 20. s. 1. & 2. Eng.

Lunatics, and their guardians and committees, enabled to accept of surrenders of old leases and to grant new ones.

lord chancellor by such order shall direct. And by s. 2. every lease so executed shall be as valid as if such lunatic was, at the time of making thereof, of sane mind; and had executed the same in his proper person. Provided

s. 3.

*Fines for re-
news how paid
and applied.*

(s. 3.) that all fines and sums of money which shall be received or paid for the renewing of any such lease, shall (after a deduction of all necessary incident expenses) be paid to the guardian or committee of said lunatic, and be applied for the benefit of such lunatic, in such manner as the lord chancellor shall direct; but upon the death of such lunatic, all such sums of money as shall arise by fines, &c. or so much as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatics, be considered as real estate, unless such lunatic shall be tenant for life only; and then the same shall be considered as personal estate. The 11

11 Ann. c. 3.
s. 1. 1r.

*Guardians of in-
fants enabled to
renew leases for
lives.*

Ann. c. 3. 1r. also provides, that if any person, who, in pursuance of any covenant or agreement for renewal contained in any lease for life or lives, ought to make such new lease, shall be under any disability by reason of infancy, coverture, or *non compos mentis*; then in case of disability by infancy, by the direction of the court of chancery or exchequer, signified by an order made upon hearing all parties concerned, on the petition of such lessee, the guardian of such infant shall, upon the lessee tendering the fine agreed on in such lease, and performing all covenants and agreements on his part previous to such renewal, in such manner as shall by such order be directed, renew such lease, by adding such new life or lives as shall be named by such lessee, according to the said covenants, &c. And by s. 2. where

s. 2.

*Renewal by
master in chan-
cery in cases of
coverture, ab-
sence beyond
sea, or where
party is non
compos.*

the person obliged by covenant, &c. to make such renewal, shall be disabled to renew by being under coverture, beyond the seas, or *non compos mentis*, it shall be lawful for the lord chancellor, upon petition in chancery, or payment of the fine or sum of money to be paid upon such renewal, for the use of the person entitled to the same, and upon the lessee performing all covenants, &c. previous to such renewal, to order such renewal to be made

made by one of the masters of said court to be nominated by the lord chancellor. And such master, and such guardian as aforesaid, shall execute such deed of renewal in the name of the person who ought to have renewed the same; which deed of renewal (counterparts thereof being duly perfected by the lessee, for the use of the person having the reversion and inheritance of such lands, &c.) shall be as good as if such persons had not been so disabled, and had executed the same: Provided (s. 3.) such person under age, or under disability, were at the time of the renewal compellable to make such renewal.

s. 3.

Proviso.

X. Next as to the *mode of proceeding in the courts of equity*: By the 4 Ann. c. 16. s. 22. Eng. no *subpœna* or process for appearance, shall issue out of any court of equity till the bill is filed, (except in cases of bills for injunctions to ^{stay} wastes, or to stay suits at law,) and a certificate thereof brought to him who usually makes out *subpœnas* or other process in the several courts of equity, under the hand of the officer who usually files bills, for which certificate he shall receive no fee. And the 6 Ann. c. 10. Ir. contains a similar clause. And for making process effectual against persons who abscond, and cannot be served therewith, or who refuse to appear; the 5 Geo. 2. c. 25. s. 1. Eng. provides, that if in any suit in equity, any defendant, against whom process shall issue, shall not cause his appearance to be entered, according to the rules of the court in case such process had been served; and affidavit shall be made that such defendant is beyond the seas, or that upon inquiry at his usual place of abode he could not be found so as to be served, and that there is just ground to believe that such defendant is gone out of the realm, or absconds, to avoid being served; the court may make an order appointing such defendant to appear at a day therein to be named: and a copy of such order shall, within 14 days, be inserted in the London Gazette, and published on some Lord's day after divine service, in the parish church where such defendant made his usual abode within 30 days before his absenting; and a copy shall, within the time aforesaid, be posted up, *viz.* a copy of such order made in chancery, exchequer, or duchy chamber, shall be posted up at the Royal Exchange

§ 10.

No subpœna to issue till bill filed, &c.

4 Ann. c. 16.

s. 22. Eng.

*“to quiet possessions,” here added by 6 Ann. c. 10. Ir.

6 Ann. c. 10.

s. 20. Ir.

5 Geo. 2. c. 25.

s. 1. Eng.

Proceeding to have bill taken pro confesso, where party does not appear to subpœna, and is suspected of absconding.

Exchange, and a copy of every such order made in any of the courts of equity of the counties palatine, or of the great sessions in Wales, shall be posted up in some market-town within the jurisdiction of the court: and if the defendant do not appear within such time as the court shall appoint, then on proof made of such publication of such order as aforesaid, the court may order the plaintiff's bill to be taken *pro confesso*, and make such decree

Court may order plaintiff to be satisfied, upon his giving security to abide the order of the court if defendant shall appear.

thereupon as shall be just: and the court may order such plaintiff to be paid his demands out of the estate, &c. sequestered according to the decree, such plaintiff giving such security to abide such order touching the restitution of such estate, as the court shall make upon the defendants appearance; and paying such costs as the court shall order; but in case such plaintiff shall refuse to give security, then the court shall order the estate, &c. sequestered, or whereof possession shall be decreed to be delivered, to remain under the direction of the court, until the appearance of the defendant to defend such suit. And by

s. 2.

Defendant brought into court by habeas corpus, and refusing to enter an appearance, court to enter it for him.

s. 2. if any defendant, by virtue of any *habeas corpus*, or other process of any court of equity, shall be brought into court, and refuse, &c. to enter his appearance, or to appoint a clerk in court; such court may appoint a clerk in court to enter an appearance for such defendant. By

s. 3.

Persons in custody so refusing, served with a copy of the decree.

s. 3. if the person against whom a decree shall be made upon refusal, &c. to enter his appearance, shall be in custody or forthcoming, so that he may be served with a copy of such decree, then he shall be served with a copy thereof, before process shall be taken out to compel the performance thereof. And by s. 4. if any decree shall

s. 4.

Proviso as to persons out of the realm.

be made in pursuance of this act, against any person out of the realm or absconding, and such person shall within 7 years return, or become publicly visible, he shall likewise be served with a copy of such decree, within a reasonable time after his return shall be known to the plaintiff: and in case any defendant against whom such decree shall be made, shall, within 7 years, happen to die before his return, or shall die in custody before his being served with a copy of such decree, then his heir, if such defendant shall have any real estate sequestered, or whereof possession shall have been delivered to the plaintiff

iff, or the husband, guardian, or committee of such
 heir; or if the personal estate of such defendant be se-
 questered, or possession thereof delivered, then his exe-
 cutor or administrator may be served with a copy of such
 decree, within a reasonable time after it shall be known
 to the plaintiff that the defendant is dead, and who is
 his heir, executor, or administrator, or where they may
 be served. And by s. 5. if any person so served shall
 not, within 6 months after such service, appear, and
 petition to have the cause re-heard, such decree shall
 stand absolutely confirmed against such person, his heirs,
 &c. and all persons claiming under him by any act sub-
 sequent to the commencement of such suit. By s. 6. if
 any person served with a copy of such decree shall,
 within 6 months after such service, or if any person not
 being so served shall, within 7 years after the making
 such decree, appear in court, and petition to be heard
 with respect to the matter of such decree, and pay down,
 or give security for, such costs as the court shall think
 reasonable; the person so petitioning, or any person
 claiming under him by any act done before the com-
 mencement of the suit, may be admitted to answer the
 bill, and issue may be joined, and witnesses examined,
 and such other proceedings had thereon, as might have
 been in case the party had originally appeared. But by
 s. 7. if any person against whom such decree shall be
 made, his heirs, executors or administrators, shall not,
 within 7 years after the making such decree, appear and
 petition to have the cause re-heard, and pay or give se-
 curity for such costs as the court shall think reasonable,
 such decree shall stand confirmed against the persons
 against whom such decree shall be made, their heirs, &c.
 and all persons claiming under them by any act done sub-
 sequent to the commencement of such suit. By s. 8. this
 act shall not make good any proceeding against any per-
 son beyond the seas, unless it shall appear to the court,
 by affidavit, before the making such decree, that such
 person had been in England within 2 years next before
 the *subpœna* issued. And by s. 9. this act shall not
 make good any proceeding against any person in any
 court of equity having a limited jurisdiction, unless it

s. 5.

*Decree absolute
if persons served
with a copy do
not petition for
a rehearing
within 6 months.*

s. 6.

*Persons not
served may,
within 7 years,
be allowed to
answer the bill,
&c.*

s. 7.

*If no appearance
within 7 years,
or petition for a
re-hearing, nor
surety for costs,
decree abso lu*

s. 8.

*Proviso as to
persons beyond
the seas.*

s. 9.

*Proviso as to
courts of a li-
mited jurisdic-
tion.*

shall appear to such court, by affidavit, before the making such decree, that such person had resided within the jurisdiction of such court within one year next before the *subpæna* issued.

Chancery or exchequer may decree against trustees standing out process to a sequestration, as if they had appeared.

1 Geo. 2. c. 17. s. 4. Ir.

5 Geo. 2. c. 4. s. 6. Ir.

And such decree shall be absolute.

5 Geo. 2. c. 8. s. 2. Ir.

Where trustees cannot be found, an absolute decree may be made as if they were served, &c.

s. 3.

Saving for parties concerned in interest.

7 Geo. 2. c. 14. s. 7. Ir.

The following Irish statutes also provide for the default of parties in not appearing to the process of the courts of equity. By the 1 Geo. 2. c. 17. s. 4. Ir. in all suits which shall be commenced by English bill in chancery or exchequer, it shall be lawful for said courts to hear and determine such causes, and to make such decrees therein against every person who shall appear to have been duly served with the process of said courts, and to have stood out the process to a sequestration, and to be only a trustee, and no otherwise concerned in interest in the matter in question, as if such trustee had duly appeared and put in his answer: And by the 5 Geo. 2. c. 4. s. 6. Ir. no conditional decree shall be pronounced against such trustee, but such decrees shall be absolute. And the 5 Geo. 2. c. 8. s. 2. Ir. further provides, that in all suits which shall be commenced by English bill in chancery or exchequer, where it shall appear to the court by affidavit, that any defendant is only a trustee, and that diligent search and inquiry has been made after such defendant to serve him with the process of the court, and that he cannot be found, it shall be lawful for said courts, respectively, to hear and determine such causes, and to make such absolute decrees against every person who shall appear to be only a trustee, and no otherwise concerned in interest, as if such trustee had been duly served with the process of the court, and had appeared and filed his answer thereto, and as if such trustee had appeared by his counsel and clerk at the hearing of such cause. Provided (s. 3.) that no decree so to be obtained shall bind or affect any person against whom such decree shall be made, without service of process upon him, his heirs, executors or administrators, in respect of any estate or interest which such person shall have at the time of making such decree, or otherwise than as a trustee. The 7 Geo. 2. c. 14. s. 7. Ir. further provides, that where any defendant to any bill filed in chancery

chancery or exchequer, shall appear to said courts to have been duly served with process of *subpœna* to answer such bill, and shall stand out process of contempt to a sequestration, and neglect to appear on such service, by his six-clerk or attorney; such court may appoint a clerk in court to appear for such defendant, and such

Where defendant served with subpœna to answer, stands out process to a sequestration, clerk in court may be appointed to appear.

proceedings may be had as if such defendant had actually appeared. Provided (s. 8.) that all persons who shall, at the time any decree in pursuance of this act shall be made, be under the age of 21 years, or of non

s. 8.

Provide as to infants, &c.

sane memory, or *feme covert*, they shall have 2 years from the time of service of such decree upon them after removal of such disability, to shew cause against the same. And the 13 Geo. 2. c. 9. s. 1. Ir. explains this act by declaring, that after such appearance by a clerk or attorney appointed by the court, it shall not be necessary to begin the process of contempt again, but the plaintiff may proceed to hear his cause upon the sequestration obtained by him, as if the defendant had appeared and stood out such process of contempt or sequestration.

13 Geo. 2. c. 9. s. 1. Ir.

After appearance pursuant to 7 Geo. 2. c. 14. s. 7. plaintiff may proceed upon such sequestration, as if defendant actually appeared and stood out process.

And this act further provides, (s. 2.) that in all suits instituted in equity against any person to have the testimony of witnesses perpetuated, where any defendant shall, either for not appearing, or in case of appearance for not

s. 2.

answering, or for any other cause, stand out process of contempt to a sequestration, and the sequestrators shall return that no effects of such defendant are found within the kingdom to be sequestrated; the plaintiff in every such case, upon his publishing in the Dublin Gazette, 2

Proceedings upon bills to perpetuate testimony, where defendants stand out process to sequestration.

days in each week for 6 weeks successively, the names of the plaintiffs and defendants, and mentioning which of the said defendants have run into contempt to a sequestration, as also the said return, shall, upon application to the court, be at liberty to examine his witnesses against such defendants as shall be so in contempt, and pass publication of the depositions, as if such defendant had appeared and answered, and the cause been regularly at issue, and publication passed, according to the course of such court. And by s. 3. in every such suit for perpetuating the testimony of witnesses, wherein

s. 3.

*Suc's causes how
heard.*

the plaintiff shall have examined his witnesses *de bene esse*, and the defendant shall stand out process to a sequestration for non-appearance, or for not answering, and such return had thereon as aforesaid, or for any other cause, so as the plaintiff cannot examine his witnesses in chief, the plaintiff, upon giving such notice in the gazette as aforesaid, shall, upon application to the court, have publication of such depositions, and the cause shall be, as against such defendant as shall be so in contempt, proceeded on upon the sequestration and return; and the same shall be as effectual as if such defendant had appeared and answered, and the cause had regularly proceeded to issue, and the said depositions had been taken upon an examination in chief.

*Appearances
may be entered
for defendants
having privilege
of parliament.*

45 Geo. 3. c. 124.
s. 4. U. K.

By the 45 Geo. 3. c. 124. s. 4. U. K. in case any defendant having privilege of parliament shall [*stand out] a return of process of sequestration issued against him for not putting in an appearance to any bill in equity for enforcing discovery and relief, or discovery alone, then such court may, upon producing the return of such sequestration, on the application of the plaintiff, appoint a clerk in court to enter an appearance for such defendant; and such proceedings may be thereupon had as if the party had actually appeared. And by s. 5. when any defendant, having privilege of parliament, shall have appeared to any bill filed against him seeking a discovery upon oath, or when an appearance shall have been entered for him according to the provisions aforesaid, and such person shall not put in his answer within the time allowed by the rules of such court, then it shall be lawful for the court, upon the application of the plaintiff, to order that such bill shall be taken *pro confesso*, unless the defendant shall, within 8 days after being served with such order, shew good cause to the contrary. And by s. 6. when any such order shall have been pronounced for taking such bill *pro confesso*, such bill shall be read in any court of law or equity as evidence of the matters therein contained, as if such facts had been admitted by the answer of the defendant, and shall be received

*Bill taken pro
confesso against
privileged per-
son not answer-
ing after his ap-
pearance, or
after appearance
entered for him.*

*Such bill taken
pro confesso
shall be read in
evidence.*

* These words omitted in the enacting part of this clause.

received in evidence of the same facts, and on behalf of such persons, as the answer of the defendant to said bill might have been. And the 47 Geo. 3. st. 2. c. 40. U. K. provides, that when any bill or information shall be exhibited in any court of equity against any knight, citizen, or burgess of the house of commons, it shall not be necessary to leave a copy of such bill, &c. with the defendant, or at his house or lodging, or last place of abode; but it shall be lawful for the person exhibiting such bill, &c. to proceed, for want of appearance or answer, to sequester the real and personal estate of such knight, &c. although no copy of the bill, &c. shall have been left with him, or at his house or lodging, or last place of abode, as he might before this act have proceeded, after the defendant had had a copy of the bill, &c. delivered to him, &c.

47 Geo. 3. st. 2.
c. 40. U. K.

Where bill exhibited against a member of the house of commons, not necessary to leave a copy of the bill with such defendant.

No statute in England prescribes any particular mode of taking the answers of quakers: But by the 6 Geo. 1. c. 6. s. 5. Ir. quakers shall be obliged to give in their answers, (to bills exhibited against them in the courts of chancery or exchequer) with their names or marks subscribed, making the affirmation following before the persons authorized by commission to take their answers: "I, *A. B.* do hereby sincerely and solemnly declare, that I am persuaded in my conscience, that the taking of an oath in any case whatsoever is contrary to the law of God contained in the New Testament; and, being thoroughly convinced thereof, I do further sincerely and solemnly declare, that the answer I here give is in all points true, according as I give the same, and as the same is set forth in this present writing, to which I have subscribed my name, (*or made my mark*):" which affirmation shall be writ at large at the bottom of the parchment whereon such answer shall be ingrossed, and the name signed or mark put thereto, witnessed by the six-clerk, or attorney or solicitor, who shall be concerned for such person: And if any quaker shall so declare contrary to the truth, and be thereof convict either upon indictment or information, he shall suffer the penalties of wilful and corrupt perjury. Provided (s. 6.) that no person shall be deemed a quaker

Answers of quakers how taken and verified.

6 Geo. 1. c. 6.
s. 5. Ir.

s. 6.

Who to be deemed quakers.

within

within the intention of this act, unless he shall produce a certificate to the court, under the hands of 6 credible persons of his own congregation, of his being of that profession at least 3 years then last past.

Sheriff liable for the escape of any person in custody under a decree.

5 Ann. c. 9.
2. 4. Eng.

With respect to the execution of the decrees or orders of the courts of equity: It is a provision of the 5 Ann. c. 9. Eng. that if any person shall be in custody of any sheriff or other officer for not performing any decree in chancery, or exchequer, whereby money is decreed to be paid, and shall escape, the person to whom the money was to be paid, shall have the same remedy against the sheriff, as if such person had been in custody upon an execution at law, and shall recover the money decreed with costs, in an action of debt, or upon the case, in the courts at Westminster. No Irish statute contains any similar provision. To this head is to be referred the 28 Geo. 3. c. 35. Ir. which provides, that where the court of chancery or exchequer shall decree or order a sale of any lands, &c. or of any term or interest therein, and conveyances to be made to the purchaser thereof; in case any difficulty shall arise respecting the execution of any deeds or conveyances by any proper party, the party interested in having such deed executed, may apply by motion or petition to such court, stating such difficulty; and in case it shall appear that any necessary party to such deed, bound by such decree or order, and who ought by virtue thereof to execute the same, hath obstinately refused or declined to execute the same, or cannot be found, or by being out of the reach of the process of the court cannot be compelled to obey such decree, &c. whereby the title of such purchaser may be rendered defective, the court of chancery may order one of the masters of said court, and the court of exchequer may order the chief remembrancer of said court, to execute such deed, by signing, sealing, and delivering the same, in the name of such party; and such execution by such master or chief remembrancer, shall as effectually convey the estate and interest of such party, as if such deed had been executed by such party in obedience to such decree: Provided such officer,

28 Geo. 3. c. 35.
Ir.

In what cases master in chancery, or remembrancer in exchequer, may be ordered to execute deeds to purchasers in the names of necessary parties.

officer shall receive a fee of 5s. for such signing and sealing. This statute is peculiar to Ireland. The

Fee for signing and sealing.

41 Geo. 3. c. 90. s. 5. U. K. provides, that where in any suit between party and party, [*or in any matter or

41 Geo. 3. c. 90. s. 5. U. K.

proceeding by petition in cases of minors, bankrupts, idiots, or lunatics,] any decree shall be pronounced, or any order made for payment or for accounting for money, by the court of chancery in England, the lord chancellor shall, upon application made to him, cause

Orders made for payment of money by chancery in England, how enforced in Ireland.

a copy of such order or decree to be exemplified and certified to the court of chancery in Ireland, under the great seal of England; and the chancellor of Ireland shall forthwith cause such order, &c. when it shall be presented to him so exemplified, to be inrolled in the court of chancery in Ireland, and shall cause process of attachment and committal to issue against the person of the party against whom such order, &c. shall have been made, to enforce obedience to the same, as if such order, &c. had been pronounced in the court of chancery in Ireland; and it shall be lawful for the

chancellor of Ireland, from time to time, to make orders, upon petition, for payment of money levied under such

Money when levied lodged in bank of Ireland.

process into the bank of Ireland, with the privity of the accountant general of said court, to the credit and for the benefit of the party who shall have obtained such order, &c. and the governor and company of the bank of Ireland shall receive and hold such monies, subject to the orders of said court: Provided that no such monies shall be subject to poundage when the same shall be paid out by order of the said court. And

But not subject to poundage.

s. 6.

this act (s. 6.) provides in a similar manner, *e converso*, for certifying the decrees or orders of the court of chancery in Ireland, to the court of chancery in England, to be there inrolled, and obedience thereto enforced.

Similar provision substituting the word "Ireland" for "England."

And by s. 7. in all cases where in any suit between party and party, any decree shall be pronounced, or any order made for payment or for accounting

s. 7.

The like provision in the case of money ordered to be paid by the exchequer in England.

* This clause is not contained in s. 6. which respects the decrees or orders of the court of chancery of Ireland,

for money, by the barons of the exchequer in England, the chief baron, or one of the barons of said court, shall, upon application made to him, cause a copy of such order or decree to be exemplified and certified to the barons of the court of exchequer in Ireland, under the seal of the court of exchequer in England, and the barons of the exchequer in Ireland shall forthwith cause such order, &c. when it shall be presented to them so exemplified, to be inrolled in the court of exchequer in Ireland, and shall cause process of attachment and committal to issue against the person of the party against whom such order, &c. shall have been made, to enforce obedience thereto, as if such order, &c. had been pronounced in said exchequer in Ireland: And it shall be lawful for the barons of the exchequer in Ireland, from time to time, to make orders, upon petition, for payment of money levied under such process into the bank of Ireland, in the name of the deputy remembrancer of said court, in trust for the party who shall have obtained such order, &c.: And the governor and company of said bank shall receive and hold such monies subject to the orders of said court: Provided that no such monies shall be subject to poundage, when the same shall be paid out by order of said court. And

s. 8.

Similar provision substituting the word "Ireland" for "England."

by s. 8. a similar provision is made for certifying the decrees or orders of the court of exchequer in Ireland, to the court of exchequer in England, to be there inrolled, &c.

Certain orders of chancery respecting the depositing suitors money confirmed.

12 Geo. 1. c. 32
s. 1 & 2. Eng.

For better securing the monies and effects of the suitors of the court of chancery; the 12 Geo. 1. c. 32. Eng. recites a certain order of the lords commissioners dated the 26th of May 1725 for the masters to deliver into the bank the money and effects under their care; and a certain other order of the lord chancellor dated the 4th of November following directing the said order of the 26th of May to be observed, with the additions in the said order of the 4th of November contained; and enacts, that the said two orders shall be observed, unless in such points as shall be varied in this act, or be hereafter changed by the court of chancery. And

s. 3.

by s. 3. provides, that there shall be one person appointed

ed by the court of chancery to do all such things relating to the delivery of the suitors money and effects into the bank, and taking them out, and the keeping the accounts with the bank, as by the said orders are directed to be done by the masters and usher; which officer shall be called the "accountant general of the court of chancery" and shall hold such office during the pleasure of the court; and an account shall be kept in his name with the bank of England, on behalf of the suitors, in such manner as is directed by the said orders with respect to the masters; and the same rules as are prescribed by the said orders to the masters, usher, and bank, as to the delivering in and taking out of the monies and effects of the suitors, and other matters therein contained, shall be observed by the suitors, the bank, and the accountant general, unless where the court shall otherwise determine. By s. 4. the accountant general shall stand in the place of the masters and usher; and shall receive no other fee from the suitors than what is allowed to the masters by the said order of the 26th of May. And by s. 5. all mortgages, tallies, orders, stocks, annuities, and other transferrable securities, to be taken in the name of any officer of the court, shall be taken in the name of the accountant general; and in all such assignments the particular trust shall be specified: and such other rules in respect to such transferrable securities, shall be observed by the accountant general and others, as by the said orders are appointed to be observed by the masters, usher, and others. By s. 6. the court of chancery shall have power to vary the regulations in the said orders, or herein before contained, and to make such further regulations about the premises as to the court shall seem meet. By s. 7. after the death or removal of any accountant general, all mortgages, &c. vested in him in trust for the suitors, shall vest in the succeeding accountant general, subject to the same trusts, without any assignment or transfer; and all monies and effects of the suitors, for which he shall have credit in his account with the bank, shall be carried to the account of the succeeding accountant general

Office of accountant general established.

s. 4.

Accountant general to be in the place of the masters and usher of the court.

s. 5.

Transferrable securities to be taken in the name of the accountant general.

s. 6.

Chancery may alter these orders.

s. 7.

After death of accountant general securities vested in his successor.

s. 8. general. And by s. 8. the accountant general shall not meddle with the actual receipt of any of the suitors money or effects, but shall only keep the account with the bank; and observing the rules hereby prescribed or hereafter to be prescribed by the court, he shall not be answerable for any money or effects he shall not actually receive; and the bank shall be answerable for the money and effects of the suitors received by them. The 12 Geo. 1. c. 33. s. 20. Eng. further provides, that all the money deposited in the bank on account of the suitors of the court of chancery, and by order of court, shall be one common and general cash, and shall be promiscuously issued, as the court shall direct, for answering the demands of any of the suitors.* The 23 & 24 Geo. 3. c. 22. Ir. in a similar manner provides (s. 1.) that all securities directed to be taken in the name of any officer of the court of chancery in Ireland, shall be taken in the name of the accountant general: And by s. 2. that there shall be a person appointed from time to time by the king, with a reasonable salary, to do all matters requisite for the payment, delivering and depositing of the monies, securities, and effects of the suitors of the court of chancery into and in the national bank of Ireland, and for taking out the same, under the direction of said court, and for the keeping the accounts with the said bank; which person shall be called "the accountant general of the court of chancery;" and an account shall be kept in his name with said bank, for and in behalf of the suitors of said court in two ways, viz: a general account on behalf of the suitors as one fund, and a particular account in each cause in which such monies, &c. shall be so paid, &c. And by s. 3. all monies, &c. that shall be ordered to be brought into the said court, or that shall arise by any sales made under any decree of said court, shall not be paid or deposited with the masters and ushers of said court, but be paid into and deposited in the said bank, to be issued from thence according to the orders of said court; and the said

Accountant general not to meddle with suitors money, but to keep account with the bank.

12 Geo. 1. c. 33. s. 20. Eng.

The cash in the bank to be one common cash.

23 & 24 Geo. 3. c. 22. s. 1. Ir.

Securities to be taken in the name of the accountant-general.

s. 2.

Duty of this officer in Ireland.

s. 3.

He shall not meddle with suitor's money but control the bank.

* The fund thus created by depositing the suitors money in bank, has been specially applied and disposed of by particular statutes.

said masters and usher shall have no power over the same, otherwise than as said court shall order; nor shall the said accountant general meddle with the actual receipt of any of the monies or effects of the suitors, otherwise than he shall be directed by some order of said court, but shall only keep and control the account with the said bank, and shall not be answerable for any monies, &c. which he^t shall not actually receive; but the said bank shall be answerable for all monies, &c. actually received by or deposited with them. And, that all payments into the said bank may be made with the privity of the accountant general, this act provides (s. 4.)

s. 4.

that the said accountant general shall make out an order to said bank to receive the same, which being obtained, such payment shall be placed to the credit of the accountant general, and of the cause in which

His orders upon the bank to be filed with the clerk of the report office.

the same shall be paid, and the proper officer of said bank shall give a receipt for the same, signed by him for the governor and company of the bank, and specifying that the same is placed to the credit of the accountant general, and the accountant general shall annex his certificate thereto of such payment; which receipt and certificate shall be carried to the register's office, and be left with the clerk (to be appointed by the king with a reasonable salary, to be called the clerk of the report office) to be filed of record there; and a like course shall be observed with respect to deposits made of deeds, &c. And by s. 5. all monies arising from sales made by the masters of said court, and deposits

s. 5.

of money to be made thereon, shall be paid into said bank within the time heretofore usually allowed, with the privity of the accountant general; and the master shall, immediately after every sale, and before he shall

Money arising from sales, &c. to be paid into bank with the privity of the accountant general.

sign any report thereof, by note under his hand, certify the same to the accountant general, and the money to be paid thereon; whereupon the accountant general shall upon application to him, give such order to the bank to receive the same; and such further proceedings shall be had as herein before prescribed as to other monies paid into said bank: And such accountant general shall, upon application for the purpose, give certificates to

Certificates of deposits to be given by him.

shew

s. 7.

*Proceeding on
taking out suit-
or's money, or
securities, &c.
deposited.*

shew that such deposits and monies are or are not paid into the bank with his privity. And by s. 7. no monies of the suitors of said court shall be paid out of said bank without some decree or order of said court, which shall be carried to the accountant general, who is to draw upon the bank for the sum so ordered, which draft shall specify the person named, and the order under which it shall be made, and shall contain a proviso, that if the same is not paid within a month after the date thereof, the same shall be void; and the accountant general shall immediately certify to the said report office, that he has drawn on said bank, mentioning the order, and the cause in which such draft shall be made; and the person to whom such payment shall be ordered, or his attorney or agent, shall give a receipt to the accountant general for said draft, and shall carry the same to the register's office of said court, to be countersigned by said register or his deputy, and entered at said report office with the clerk of said office, without which the same shall not be payable; and the same course, as near as may be, shall be observed with respect to the taking out of the bank all deeds, &c. deposited under the decrees, &c. of said court. By s. 6. all

s. 6.

No fee, save salary to accountant general or clerk of reports.

duties hereby prescribed to be done by the accountant general, and clerk of the reports, shall be performed without any fee, other than the annual salaries annexed to their respective offices; and if either of them, or any person on their behalf, shall demand or accept any fee, he shall upon conviction thereof, be deprived of said office, and be incapable of serving his majesty in any civil office, over and above such punishment as shall be inflicted for such misdeemeanor by the court before whom he shall be tried. By s. 8. every person who

s. 8.

Usher's fee to be lodged with accountant general.

shall obtain any decree or order for the payment of any such money as hath heretofore been usually deposited with, or paid out by the usher, shall at the time of demanding such draft as aforesaid from the accountant general, deposite and lodge with the accountant general, the fee of 6*d.* in the pound, to be handed over to the usher. By s. 9. where any stock, securities, or debentures, are to be purchased by the order of said

s. 9.

Stock, &c. bought or sold with the privity of the accountant general.

court

court, for the benefit of any of the suitors, or the parties interested therein, or to be sold, transferred, or altered, under the authority of any order of said court, a copy of the order under the hand of the register of said court, or his deputy, shall be carried to the accountant-general, and said order shall be carried into execution with the privity of the accountant general, who shall certify the same as shall be needful, and also certify the same to the report office, and to the said bank, so that the transactions respecting the same may be so carried on, that a true knowledge thereof may be had at the office of the said accountant general at the said bank, and at the said report office; and whatever monies or effects thereby belong or accrue to the said suitors, shall be paid into said bank according to the rules herein before prescribed. By s. 10. all the monies paid into the bank, on account of the suitors of the court of chancery, or by order of said court, shall be accounted one common fund, to be issued as said court shall direct; but before the issuing thereof, the cashier, or other officer of said bank, shall see that so much money as shall be so ordered, is remaining in the said bank, in the account of said accountant general, and to his credit in the cause in which such order shall be made.

s. 10.

All suitors money in bank accounted as one fund.

But this act further provides (s. 14 & 15.) that all monies, deeds, bonds, and other securities or effects, that shall be ordered to be brought into the court of exchequer, or that shall arise by any sale made under the decree of said court, shall not be paid or deposited with the chief or second remembrancer, but shall be paid into and deposited in said bank, to be issued from thence according to the orders of said court; and the chief or second remembrancer shall have no power over the same, or meddle with the actual receipt thereof, otherwise than as said court shall direct. And by s. 16. it shall be lawful for the king, from time to time, to appoint an accountant general and clerk of the reports of the court of exchequer, (with reasonable salaries) to be subject to and perform all such duties, regulations, and directions touching the monies and securities of the

The money and securities of the suitors of the court of Exc. to be lodged in bank.

s. 14 & 15.

s. 16.

Accountant general and clerk of the reports to be also appointed for this court.

suitors

s. 19. *Order by a baron for depositing or paying when exchequer not sitting.* suitors of the court of exchequer, as are herein before prescribed, imposed, or directed to be done and performed by the accountant general and clerk of the reports of the court of chancery, touching the monies, &c. of said court. By s. 19. the chief baron, and in his absence any other of the barons of said court of exchequer, may, at any time when said court shall not be sitting, make such orders for the depositing in or paying out of the said bank, the monies belonging to the suitors of said court. And by s. 17. where monies shall be ordered by chancery or exchequer to be paid on account of interest money, or for maintenance of minors or jointresses, the order of such court signed by the register, with the accountant general's draft thereon, shall be sufficient authority to the said bank for issuing the monies so ordered. But by s. 20. the said courts of chancery and exchequer respectively, shall have power to vary any of these regulations, and to make further regulations. By s. 21. after the death or removal of any accountant general, all securities vested in him in trust for the suitors of said courts, shall vest in the succeeding accountant general, and all monies, &c. of the suitors for which he shall have credit in his account with the bank, shall be carried to the account of the succeeding accountant general. The 30 Geo. 3. c. 41. Ir. further provides, that it shall be lawful for the accountant general of the court of chancery, with the approbation in writing of the lord chancellor, and for the accountant general of the court of exchequer with the approbation in writing of the chief baron, to appoint deputies, (for whom they shall be answerable) during the time of their sickness or absence respectively; and such deputies shall perform the duties of their respective principals without any fee, other than such as they shall receive from the persons by whom they shall have been appointed.

§ 11. *Decrees or orders of the master of the rolls subject to be reversed or altered by lord chancellor.* XI. For putting an end to the questions which had arisen touching the *authority of the Master of the Rolls*; the 3 Geo. 2. c. 30. Eng. enacts, that all orders and decrees made by the master of the rolls, except such orders,

ders, &c. as, according to the course of the court of chancery, ought only to be made by the lord chancellor, lord keeper, or lords commissioners of the great seal shall be deemed to be valid orders, &c. of said court, subject nevertheless to be discharged, reversed, or altered, by the lord chancellor, &c.; and so as no such orders, &c. be inrolled till the same are signed by the lord chancellor. And the 41 Geo. 3. c. 25. I. recites, that it is expedient that the office of master of the rolls in Ireland should be made a judicial office, and assistant to the lord chancellor; and therefore enacts, that it shall be lawful for the king, under the great seal of the united kingdom, to grant the commission of master of the rolls of Ireland, to any person *quam diu se bene gesserit*; and to provide that such commission shall continue in force during the good behaviour of such person, notwithstanding any demise of the king; and the master of the rolls so appointed shall have authority to make orders and decrees on all matters and causes depending in the court of chancery of Ireland; and such orders, &c. shall be deemed valid orders of said court, subject nevertheless to be discharged, reversed, or altered by the lord chancellor, &c. and so as no such orders, &c. be inrolled till the same shall be signed by the lord chancellor. And by s. 2. it shall be lawful for the king, in any such patent, to provide, that the said master of the rolls shall have power to make orders in all matters touching the execution of the laws respecting bankrupts; and such orders shall be of the like effect as if made by the lord chancellor; subject nevertheless to be discharged, reversed, or altered by the lord chancellor, &c. And by s. 8. the master of the rolls so appointed, shall have power to appoint a proper officer to execute such part of the duties as have been heretofore performed by deputy; such officer to be first approved by the lord chancellor, by instrument under his hand and seal. Provided (s. 9.) that it shall be lawful for the king to remove any master of the rolls upon an address of both houses of parliament.

3 Geo. 2. c. 30.
Ing.

41 Geo. 3. c. 25. I.

*Master of the
Rolls in Ireland
to hold his office
quam diu se
bene gesserit.*

*And not to cease
by demise of the
king.*

*His decrees or
orders may be re-
versed or altered
by lord chancel-
lor; and to be
signed by chan-
cellor before in-
rolled.*

s. 2.

*King may au-
thorize him to
hear bankrupts
motions.*

s. 8.

*Certain part of
his duties may
be executed by
deputy.*

s. 9.

*Removeable by
address of par-
liament.*

By

*Certain duties
prescribed for
masters in chan-
cery, and fees
in respect there-
to.*

13 Car. 2. st. 1.
Eng.

By the 13 Car. 2. st. 1. Eng. *one public office shall be kept near the rolls, in which the masters, or one of them, shall constantly attend for the administering of oaths, caption of deeds and recognizances, and dispatch of all matters incident to their office, (references upon accounts, and insufficient answers, only excepted) from 7 o'clock in the morning until 12 at noon, and from 2 in the afternoon until 6 at night: and the said masters may take the fees following, *viz.* For every oath taken in the said office, 12*d.* For every bill of costs taxed for the plaintiff's not putting in his bill, or not proceeding to reply, or for not appearing, 2*s.* 6*d.* For the acknowledgment of every deed to be inrolled, 2*s.* For the caption of every recognizance, 2*s.* For every exemplification examined by 2 masters, to each of the masters who shall examine, for every skin, 2*s.* For every report or certificate in pursuance of any order upon hearing, 20*s.* For every other certificate or report of any order made upon petition or motion, 10*s.* And if any master receive any reward otherwise or for any other matter, such master, after conviction, shall be disabled from the execution of his office, and forfeit to the party grieved so much as he shall take contrary to this act, and £100. one moiety to the king, and the other to the party grieved. And tables of the said fees shall be set up in the office, and in the chapel of the rolls.

*Oath of the
clerks in chan-
cery, and clerks
of course.*

18 Edw. 3. st. 5.
E. & I.

By the 18 Edw. 3. st. 5. E. & I. the following oaths are prescribed to be taken by the clerks of the chancery, and of the clerks of course: "Ye shall swear that well and lawfully ye shall serve our lord the king, and his people, in the office of clerk of the chancery, to which ye be attitled; and ye shall not assent nor procure the king's disherison, nor perpetual damage to your power; nor shall ye do, nor procure to be done, any fraud to any man's wrong, nor thing that toucheth the keeping of the seal; and ye shall lawfully give counsel

* This statute is not printed in Ruffhead's edition of the statutes: but I have taken it from the appendix to the 23d vol. of Mr. Pickering's edition.

“ counsel the things that touch the king, when ye shall
 “ be thereto required; and the counsel which ye know
 “ touching him, ye shall conceal. And if you know
 “ the king’s disherison, or perpetual damage or fraud to
 “ be done upon the things which touch the keeping of
 “ the seal, ye shall put your lawful power to repress and
 “ amend it: and if ye cannot do it, then ye shall cer-
 “ tify the chancellor or other, which may do the same
 “ to be amended to your intent.” And for the clerks of
 course shall be added: “ And ye shall not bring, nor
 “ to your knowledge suffer to be brought, any writs
 “ which ye make out of the court not sealed, thereof to
 “ do execution: nor shall record any attorney by writs,
 “ nor without writs, without especial license, if ye have
 “ not lawfully examined the party and the attorney in
 “ proper person, or at the least him that shall make at-
 “ torney in proper person; nor shall ye deliver any
 “ writ which shall be of commandment to the examiners,
 “ nor to the seal, before that the same writ be sent to
 “ you by the commander, which thereof hath power,
 “ unless it be to the chancellor, or to one of the mas-
 “ ters, which commandeth you to make the writs. And
 “ all the writs that ye shall make, ye shall deliver to the
 “ examiners by your own hand, or by one companion
 “ which is sworn to the king, if ye yourself be out of
 “ the court because of sickness or other cause necessary,
 “ so that ye cannot do it. And no writ written of ano-
 “ ther man’s hand shall be delivered to the examiners,
 “ under your name, as yours, nor no name shall ye put
 “ under your writs, but your own. As God you help,
 “ and all saints.” The authority of the master of the

rolls to appoint the six-clerks of chancery is recognized
 by the 14 & 15 Hen. 8. c. 8. Eng. which enacts, (s. 2.) 14&15 Hen. 8.
 that all who shall be in the office of six-clerks of chan- c. 8. s. 2. Eng.

cery, may marry and hold their offices. Provided (s. 3.) *Authority of the*
 that the master of the rolls be not prejudiced in the dis- *master of the*
 position of the said offices, the forfeiture by marriage *rolls to appoint*
 only except; and that the said officers give such attend- *the six-clerks*
 ance to the master of the rolls as hath been accus- *recognized.*

4 Ann. c. 16.
s. 23. Eng.

Sworn clerks to
have the term fee
of 3s. 4d. &c.

25 Geo. 2. c. 14.
s. 2. Ir.

Delays arising
from the death or
removal of six-
clerks obviated.

Appointments
during the va-
cancy of the of-
fice of register,
&c. made by the
lord chancellor,
of persons to be
sub-registers,
&c. shall be
valid.

45 Geo. 3. c. 75.
G. B.

tomed. To which there is no statute similar in Ire-
land. It is a provision of the 4 Ann. c. 16. s. 23. Eng.
which may be here stated, that no copy, abstract, or
tenor of any bill in equity, do go with the *dedimus* or
commission for taking the defendant's answer; but in
lieu thereof, the sworn clerks of the court of chancery
shall take, to their own use, the whole term fee of
3s. 4d. and also the whole fees for all small writs made
by the sworn clerks. No Irish statute contains any si-
milar clause. To obviate the difficulty, delay, and ex-
pense, that often attended the obliging parties in suits
to appear and elect six-clerks in the room and stead of
those dying or removed; the 25 Geo. 2. c. 14. s. 2. Ir.
provides, that upon the death or removal of any six-
clerk in the court of chancery, such death or removal
shall not stop or delay any suit depending in said court,
but the six-clerk who shall succeed the six-clerk so dy-
ing, &c. shall, in 8 running days after the service of any
party, or his agent or solicitor, who was so concerned for
such defendant at the time of such death, &c. with a
subpæna to elect a clerk in such suit, stand in the
place of such clerk, and act as a six-clerk for such de-
fendant in such suit, until the client of the six-clerk so
dying, &c. shall think fit to employ any other clerk to
appear as a six-clerk in such suit.

It is declared and enacted by the 45 Geo. 3. c. 75.
G. B. that all appointments and nominations, which,
during any vacancy of the office of register and keeper
of the register and registers in the court of chancery of
Great Britain, shall be made by the lord chancellor,
under his hand and seal, of any person to be a sub-re-
gister, or deputy register, or filer or keeper of the re-
ports, and certificates and books of entries of orders and
decrees, or to be an entering clerk for entering orders
made in said court, or to hold any office or place, the
appointment, &c. to which might have been made by
the person holding the office of register, &c. in case
such office had not been vacant, shall be valid. This
act extends only to Great Britain.

XII. In respect to *costs* in equity. The 17 Ric. 2. § 12. c. 6. E. & I. provides, that when people are made to come in the chancery, by writs founded on untrue suggestions, the chancellor shall have power to award damages to him who is so unduly troubled. And for preventing vexatious suits in equity, the 4 Ann. c. 16. s. 23. Eng. further provides, that upon the plaintiff's dismissing his own bill, or the defendants dismissing the same for want of prosecution, the plaintiff shall pay to the defendant his full costs to be taxed by a master.* The 25 Geo. 3. c. 51. Ir. contains a similar provision.

Costs in chancery.

17 Ric. 2. c. 6. E. & I.

4 Ann. c. 16. s. 23. Eng.

Full costs on bills dismissed.

* "Or other officer" added in 25 Geo. 3. c. 51. s. 3. Ir.

THE END OF THE THIRD BOOK.

2 & 2

CHAP.

CHAP. I.

OF

Offences against God and Religion.

Book IV.

THE statutes which relate to the several species of public wrongs, or crimes and misdemeanors, are to be the subject of the 4th part of this digest, in the progress of which, the distinctions made by the statute law of England and Ireland as to the nature of crimes and their punishments, the description of persons capable of committing crimes, and the different degrees of guilt amongst criminals, *viz.* as principals and as accessaries, will appear or result: I proceed, therefore, in the first instance, to those offences which are more immediately injurious to God and his holy religion, and in their consequences injurious also to civil society; of which species the first is that of *Apostacy*.

§ 1.

Punishment of persons denying the christian religion to be true, &c.

9 & 10. W. 3. c. 32. Eng.

By the 9 & 10 W. 3. c. 32. Eng. if any person having been educated in, or having made profession of the christian religion, within this realm, shall, by writing, printing, teaching, or advised speaking, [*deny any one of the persons in the holy Trinity to be God, or shall assert or maintain that there are more Gods than one,] or shall deny the christian religion to be true, or the holy scriptures of the old and new testament to be of divine authority; and shall upon indictment or information, be thereof convicted upon the oath of 2 witnesses, such person shall for the first offence be incapable to have

or

* This clause relates to the crime of heresy.

or enjoy any office or employment ecclesiastical, civil, or military, or any profit appertaining to them; and any office, &c. which any person shall enjoy at the time of such conviction shall be void: and being a second time convicted of any of the aforesaid crimes, shall be disabled to sue or prosecute any action or information in law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office civil or military, or benefice ecclesiastical, and shall suffer 3 years imprisonment from the time of such conviction. Provided (s. 2) that no person shall be prosecuted by virtue of this act for words spoken, unless the information be given upon oath before some justice of peace, within 4 days, and the prosecution be within 3 months after such information. And provided (s. 3.) that persons convicted of any of the said crimes, shall, for the first offence, upon their acknowledgment and renunciation of such offence or erroneous opinions, in the court where convicted, within 4 months after conviction, be discharged from all penalties and disabilities incurred by such conviction. There is no statute in Ireland similar to this.

Penalty for 2nd offence.

s. 2.

Information to be given in 4 days after words spoken, and prosecution in 3 months after.

s. 3.

Persons renouncing such opinions, discharged from penalty for 1st offence.

II. Next as to *Heresy*: The 1 Eliz. c. 1. Eng. provides (s. 36.) [*that such person or persons to whom the queen, her heirs or successors, shall, by letters patent under the great seal of England,† give authority to have or execute any jurisdiction spiritual, or to correct errors, heresies, schisms, abuses or enormities, by virtue of this act,] shall not have power to determine any matter to be heresy, but such as have been heretofore determined to be heresy by the authority of the canonical scriptures, or by the first 4 general councils, or by any other general council wherein the same was declared heresy by the express and plain words of the canonical scriptures, or such as shall be adjudged heresy in parliament, [†with the assistance of the clergy in convocation.] The 2 Eliz.

§. 2.

What things are to be adjudged heresy, and by whom.

1 Eliz. c. 1. s. 36. Eng.

2 Eliz. c. 1. s. 17. Ir.

† not in 2 Eliz. c. 1. Ir.

c. 1. Ir. contains a similar provision. By the 29 Car. 2.

29 Car. 2. c. 9.

c. 9. s. 1. Eng.

*

* This refers to s. 18. repealed by 16 Car. 1. c. 11. Eng.

† “Or of this realm, or the lord deputy, &c. for the time being, by letters patent under the great seal of this realm,” here added in 2 Eliz. c. 1. Ir.

Writ de hæretico comburendo abolished.

s. 2.

Proviso.

7 W. 3 c. 2.
Ir.

1 Edw. 6. c. 12.
s. 3. Eng.

1 Eliz. c. 1.
s. 15. Eng.

Divers statutes concerning heresy repealed.

2 Eliz. c. 1.
s. 4. Ir.

§. 3.

Penalty for reviling the sacrament.

1 Edw. 6. c. 1.
s. 1. Eng.

s. 2.

Examination of the accusers.

c. 9. Eng. the writ called *breve de hæretico comburendo*, with all process and proceedings thereupon, and all punishment by death in pursuance of ecclesiastical censures, shall be abolished. Provided (s. 2.) that nothing in this act shall abridge the jurisdiction of protestant archbishops or bishops, or other judges of ecclesiastical courts, in cases of atheism, blasphemy, heresy or schism, and other damnable doctrines and opinions, but that they may punish the same according to his majesty's ecclesiastical laws, by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death. The 7

W. 3. c. 2. Ir. is a corresponding statute. And it is to be observed that the 5 Ric. 2. st. 2. c. 5. E. & I. 2 Hen. 4. c. 15. E. & I. 2 Hen. 5. st. 1. c. 7. E. & I. 1 & 2 Ph. & M. c. 6. Eng. 25 Hen. 8. c. 14. Eng. 34 & 35 Hen. 8. c. 1. Eng. and 35 Hen. 8. c. 5. Eng. and every other act concerning doctrine and matter of religion, are repealed by the 1 Edw. 6. c. 12. s. 3. Eng. and 1 Eliz. c. 1. s. 15. Eng. And the 5 Ric. 2. st. 2. c. 5. 2 Hen. 4. c. 15. and 2 Hen. 5. st. 1. c. 7. are also repealed by the 2 Eliz. c. 1. s. 4. Ir.

III. By the 1 Edw. 6. c. 1. Eng. (repealed by 1 Mar. st. 2. c. 2. Eng. but revived by the 1 Eliz. c. 1. s. 14. Eng.) whoever shall *deprave, despise, or contemn the most blessed sacrament of the Lord's supper*, in contempt thereof, by any contemptuous words, or words of depraving, despising, or reviling; or shall, advisedly, in any otherwise contemn, despise, or revile the said sacrament, shall suffer imprisonment, and make fine and ransom at the king's will; and the justices of the peace, or 3 of them, whereof one to be of the *quorum*, shall have power as well to take information and accusation by the oath of 2 persons, and after such accusation, &c. to inquire by the oaths of 12 men in their quarter sessions of all such informations, &c. and upon every such accusation, &c. the offenders shall be inquired of and indicted before the justices by the verdict of 12 men, if the matter of the accusation shall seem to the jury true.

And by s. 2. the justices before whom any such presentment shall be made, shall examine the accusers what other witnesses were present at the offence, and shall bind

bind by recognizance as well the accusers, as all other such persons whom the accusers shall declare to have knowledge of the offences, in £5. to the king, to appear before the justices before whom the offenders shall be tried. And by s. 3. the justices shall make process against every person so indicted by two *capias* and an *exigent*, and by *capias utlagatum*, as well within the limits of their commission, as into all other the king's dominions: and upon the appearance of the offenders, determine the contempts and offences aforesaid; and the said justices, or 3 of them, shall have power to let any persons so indicted to bail. By s. 4. the justices, where any offender shall be indicted of any offences abovesaid, shall award one writ to the bishop of the diocess wherein the offences are supposed to be committed, of this form: "The king to the bishop of — greeting: We command you, that you, your chancellor, or other your sufficient deputy learned, be with our justices assigned to keep the peace in our county of *B.* at *D.* (such a day) at our session then and there to be held, to give counsel and advice to the same our justices of the peace, upon the arraignment and delivery of offenders against the form of the statute concerning the holy sacrament of the altar." By s. 5. no person shall be indicted of any the offences abovesaid, but within 3 months after the offences committed. And by s. 6. in all trials, such offenders shall be admitted to try their innocency by as many witnesses, and of as good credence, as the witnesses which deposed against them. By s. 7. the said sacrament shall be commonly ministered unto the people within this church of England and Ireland, and other the king's dominions, under both the kinds of bread and wine, except necessity otherwise require; and the priest shall, at least one day before, exhort all persons which shall be present, to prepare themselves to receive the same; and when the day cometh, after a godly exhortation by the minister made (wherein shall be further expressed the benefit promised to them, which worthily receive the holy sacrament, and indignation of God threatened to them which shall presume to receive

s. 3.

*Process, &c.
against persons
indicted.*

s. 4.

*Writ to be directed by the
justices, to the
bishop.*

s. 5.

*Limitation for
indictment.*

s. 6.

*Defendant may
purge himself by
witnesses.*

s. 7.

*Sacrament how
to be administered.*

receive the same unworthily,) the minister shall not without a lawful cause deny the same to any person that will devoutly and humbly desire it. No statute similar to this has been made in Ireland.

§ 4

The book of common prayer appointed to be used.

5 & 6 Edw. 6. c. 1. s. 5. Eng.

s. 6.

Penalty for being present at other service.

1 Eliz. c. 2.

s. 2. & 3. Eng.

The book of common prayer as amended shall be used.

s. 4.

IV. Next as to the offence of *depraving the book of common prayer*, or of *non conformity to the worship of the established church*, in respect to which the 5 & 6 Edw. 6. c. 1. Eng. (repealed by the 1 Mar. st. 2. c. 2. Eng. which statute was repealed by the 1 Jac. 1. c. 25. s. 48. Eng.) provides (s. 5.) that the order of common service intituled "The book of common prayer" first established by the 2 & 3 Edw. 6. c. 1. Eng. but explained and made perfect by authority of this statute, with the form of making and consecrating of archbishops, bishops, priests, and deacons, hereunto annexed, shall be received and used throughout the realm. And by s. 6. if any person shall willingly be present at any other form of common prayer, administration of the sacraments, making of ministers in the church, or any other rites contained in the book annexed to this act, than is mentioned and set forth in the said book, or that is contrary to the provisions in the 2 & 3 Edw. 6. c. 1. (which are also contained in the 1 Eliz. c. 2. *post*) and shall be convicted before the justices of assize, justices of oyer and terminer, or justices of peace in their sessions, by verdict or confession, or otherwise, he shall for the 1st offence suffer imprisonment 6 months, and for the 2nd offence imprisonment for a year, and for the 3rd offence imprisonment during life. And the 1 Eliz. c. 2. Eng. further enacts (s. 2.) that the book of common prayer authorized by the 5 Edw. 6. c. 1. s. 5. Eng. with the alterations and additions by this statute, shall be in force. And by s. 3. all ministers within the queen's dominions shall use the mattens, even-song, celebration of the Lord's supper, and administration of each of the sacraments, and all the common prayer, in such order as is mentioned in the said book, with one alteration of certain lessons to be used every Sunday, and the form of the litany corrected, and two sentences added in the delivery of the sacrament to the communicants. By s. 4. if any parson or minister refuse to use the said

commo

common prayers, or to minister the sacraments, in such order as they be set forth in the said book; or shall wilfully or obstinately use any other rite or manner of celebrating the Lord's supper, or mattens, even-song, administration of the sacraments, or other open prayers, than is set forth in the said book; or shall preach or speak in derogation or depraving of the said book, or any thing therein, and shall be thereof convicted by verdict or confession, or by the notorious evidence of the fact; he shall forfeit for the first offence the profit of all his spiritual benefices arising in one whole year next after his conviction, and suffer imprisonment 6 months. And by s. 5. if any person once convict concerning the premises shall eftsoons offend, and be thereof convict, he shall for his second offence suffer imprisonment one year, and be deprived of all his spiritual promotions. And by s. 6. if any person twice convict shall offend the third time, and shall be thereof convicted, he shall be deprived of all his spiritual promotions, and suffer imprisonment during life. By s. 7. if the person that shall be convict in form aforesaid shall not be beneficed, he shall for the first offence suffer imprisonment during one year next after his said conviction. And by s. 8. if any such person not having spiritual promotion, after his first conviction, shall eftsoons offend, and be thereof convicted, he shall for his second offence suffer imprisonment during life. By s. 9. if any person shall in any interludes, plays, songs, rhimes, or by other open words, speak in derogation, depravation, or despising, of the said book, or of any thing therein; or shall by open deed, or by threatenings, procure or maintain any parson or minister to sing or say any common prayer, or to minister any sacrament, otherwise than is mentioned in the said book, or that by the said means shall unlawfully interrupt any parson or minister to sing or say common prayer, or to minister the sacraments, in such manner as is mentioned in the said book; every such person being convicted in form abovesaid, shall forfeit to the crown for the first offence 100 marks. And by s. 10. if any person being once convict of such offence eftsoons offend, and be thereof convicted, he shall for the second offence

Forfeiture for using other service.

Penalty for depraving the book of common prayer.

s. 5.

Penalty for 2d offence.

s. 6.

Penalty for 3d offence.

s. 7 & 8.

Penalty for offender having no spiritual promotion.

s. 9.

Penalty for other persons acting or speaking in derogation of the book of common prayer.

s. 10.

2d offence.

forfeit

- s. 11. forfeit 400 marks. And by s. 11. if any person after he shall have been twice convict, shall offend the third time, and be thereof convict, he shall for his third offence forfeit all his goods, and suffer imprisonment during life.
- 3d offence.
- s. 12 & 13. By s. 12. if any person, that for his offence shall be convict in form aforesaid, do not pay the sum within 6 weeks after conviction, he shall, instead of the said sum, suffer imprisonment 6 months. And by s. 13. if any person, that for his second offence shall be convict, do not pay the sum within 6 weeks after conviction, he shall, instead of the said sum, suffer imprisonment 12 months. And by s. 15. all archbishops, bishops, and other ordinaries, shall endeavour that due execution hereof may be had throughout their charges as they will answer before God. By s. 16. all archbishops, bishops, and other officers exercising ecclesiastical jurisdiction, as well in place exempt as not exempt, shall have power to punish by censures of the church, all persons which shall offend within their jurisdiction against this act.
- Penalty if forfeiture not paid.
- s. 15.
- Ordinary to enforce the execution hereof.
- s. 16.
- And punish by censures of the church.
- s. 17.
- Jurisdiction of temporal courts.
- s. 18.
- Bishops associated with the justices.
- s. 20.
- Limitation for prosecutions.
- s. 21.
- Trial of peers.
- s. 22.
- Offences how tried in corporate towns.
- s. 23.
- Saving for ordinary's jurisdiction.
- By s. 17. every justice of *oyer and terminer*, or justice of assize,* shall have power to determine all offences contrary to this act, and to make process for the execution of the same, as against any person indicted of trespass. And by s. 18. every archbishop and bishop may at his pleasure associate himself to the justices of *oyer and terminer*, or justices of assize, within his diocess, for the determining the offences aforesaid. By s. 20. no person shall be molested for any offences above mentioned, unless he be indicted at the next general sessions of *oyer and terminer*, or of assize.† By s. 21. lords of parliament for the 3d offence shall be tried by their peers. By s. 22. the mayors and head officers of cities, boroughs, and towns corporate, to which justices of assize do not commonly repair, shall have power to determine said offences yearly, within 15 days of the feast of Easter and St. Michael. By s. 23. all archbishops and bishops, and their chancellors, commissaries,

* "Justices of peace" added in 2 Eliz. c. 2. Ir.

† "Or before such justices of peace" added in 2 Eliz. c. 2. Ir.

ries, archdeacons, and other ordinaries, having ecclesiastical jurisdiction, shall have power to inquire in their visitation, synods, and elsewhere within their jurisdiction, to take informations of all the things abovementioned committed within their jurisdictions, and punish the same by admonition, excommunication, sequestration, or deprivation, and other censures. By s. 24. whatsoever person offending in the premises shall first receive punishment of the ordinary, having a testimonial thereof under the ordinary's seal, shall not for the same offence be convicted before the justices; and likewise receiving punishment by the justices, he shall not for the same offence receive punishment of the ordinary. By s. 25. such ornaments of the church, and the ministers thereof, shall be retained, as was in the church of England, by authority of parliament in the 2d year of king Edward VI. until other order be therein taken by authority of the queen, with the advice of her commissioners for causes ecclesiastical, [*or of the metropolitan.] By s. 26. if any contempt or irreverence be used in the ceremonies of the church, by the misusing of the orders appointed in this book; the queen may, by the like advice of the commissioners or metropolitan, publish such further ceremonies as may be most for the advancement of God's glory, the edifying of his church, and the due reverence of Christ's holy mysteries and sacraments. By s. 27. all laws whereby any other service, administration of sacraments, or common prayer, is established within the queen's dominions, shall be void. The 2 Eliz. c. 2. Ir. has followed this statute with such deviations as are noted in the margin, and with this further exception, that this Irish statute provided (s. 15.) that where the minister had not the use of the English tongue, he might use the Latin tongue. The 13 Eliz. c. 12. s. 2. Eng. further provides, that if any person ecclesiastical, or which shall have ecclesiastical living, shall advisedly maintain or affirm any doctrine repugnant to the articles of religion.

None shall be punished above once for one offence.

Proviso as to ornaments of the church, &c.

Other rites, &c. how appointed.

All laws for other service void.

2 Eliz. c. 2. Ir.

13 Eliz. c. 12. s. 2. Eng.

Penalty for impugning the 39 articles of religion.

* Instead of the words within the crotchets, those of the 2 Eliz. c. 2. Ir. are "or by the authority of the lord deputy with the advice of the council of this realm, under the great seal of this realm."

of religion agreed to A. D. 1562, and being convented before the bishop or ordinary, or before the queen's commissioners in causes ecclesiastical, shall persist therein, or not revoke his error, or after revocation affirm such untrue doctrine; such maintaining and persisting shall be just cause to deprive such person of his ecclesiastical promotions, and it shall be lawful to the bishop or ordinary to deprive such person. To this statute there is none corresponding in Ireland.

The book of common prayer altered.

13 & 14 Car. 2. c. 4. s. 1. Eng.

*"Ireland" in 17 & 18 Car. 2. c. 6. Ir.

s. 2.

This book shall be used.

Another act for the uniformity of public prayers, and administration of sacraments, and other rites and ceremonies, is the 13 & 14 Car. 2. c. 4. Eng. which recites that in pursuance of the king's declaration, and of a commission granted under the great seal to several bishops and other divines, the convocations of the provinces of Canterbury and York had reviewed the book of common prayer, and the book of the form and manner of the making and consecrating of bishops, priests, and deacons, and had made some alterations and additions, and presented the same to his majesty in one book intituled, "The book of common prayer, and administration of the sacraments, and other rites and ceremonies of the church, according to the use of the church of [*England] together with the psalter or psalms of David, pointed as they are to be sung or said in churches, and the form and manner of making, ordaining, and consecrating of bishops, priests, and deacons."† And by s. 2. enacts, that all ministers in any church or chapel, or other place of public worship, within England, Wales, or Berwick, shall use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer, in such order as is mentioned in said book annexed to this act: and the morning and evening prayers therein shall, upon every Lord's day, and upon all other occasions, and at the times therein appointed

† The 17 & 18 Car. 2. c. 6. s. 1. Ir. recites, that it was referred unto both houses of convocation assembled in Ireland, to consider whether the same form of public worship according to the use of the church of England, might not be profitably received as the public form of divine service in Ireland; and that both houses did fully approve and allow the same.

appointed, be openly and solemnly read by every minister or curate in every place of public worship as aforesaid. And by s. 7. in all places where the proper incumbent of any benefice with cure doth reside and keep a curate, the incumbent himself (not having some lawful impediment to be allowed by the ordinary) shall once at least in every month publicly read the common prayers and service, and (if there be occasion) administer each of the sacraments, and other rites of the church, in the parish church or chapel, as in the said book is appointed; upon pain to forfeit £5. to the use of the poor of the parish, upon conviction by confession, or proof of 2 witnesses upon oath, before 2 justices of peace of the county, &c. and in default of payment within 10 days, to be levied by distress and sale of goods, by warrant of the justices, by the church-wardens or overseers of the poor. By s. 17. no form of common prayers, administration of sacraments, rites or ceremonies, shall be used in any church or public place, in any college or hall [*in the universities, the colleges of Westminster, Winchester, or Eton,] other than what is appointed by the said book; and every governor or head of any of the said colleges or halls, within one month next after his election or collation, and admission, shall publicly, in the church, chapel, or other place of the same college or hall, and in the presence of the fellows and scholars, or the greater part of them then resident, subscribe unto the 39 articles [†mentioned in the 13 Eliz. c. 12.] and unto the said book, and declare his unfeigned assent and consent unto, and approbation of the said articles, and of the same book, and to the use of all the prayers, rites and ceremonies, forms and orders, in the said book contained, according to the form aforesaid. And all such governors or heads of colleges and halls, or any of them, as shall be in holy orders, shall once at least in every quarter (not having a lawful

s. 7.

Incumbents of livings, keeping curates, to read the same once every month.

s. 17.

No other form of common prayer to be used.

* "In any university or college within this realm" in 17 & 18 Car. 2. c. 6. Ir.

† "Agreed upon by the convocation at London A. D. 1562." in 17 & 18 Car. 2. c. 6. Ir.

s. 18.

*Who may use
the service in
Latin.*

s. 19.

*Lecturers to be
licensed, and to
declare their as-
sent to the book
of common pray-
er, &c.*

a lawful impediment) publicly read the morning prayer and service by the said book appointed, in the church, &c. of such college, &c. upon pain to be suspended from all the benefits belonging to the same government or headship, for 6 months, by the visitor: And if any governor, &c. so suspended for not subscribing, or for not reading of the morning prayer and service as aforesaid, shall not, at or before the end of 6 months after such suspension, subscribe unto the said articles and book, and declare his consent thereunto as aforesaid, or read the morning prayer and service, such headship shall be *ipso facto* void. Provided (s. 18.) that it shall be lawful to use the morning and evening prayer, and all other service prescribed in the said book, [*in the colleges and halls in the universities, in the colleges of Westminster, Winchester, and Eton,] and in the convocations of the clergy, in Latin. By s. 19. no person shall be a lecturer, or allowed to preach or read any sermon or lecture in any church, or other place of public worship, unless he be first licensed by the archbishop of the province, or bishop of the diocese, or by the guardian of the spiritualties, under seal, and shall in the presence of such archbishop, &c. read the 39 articles, with declaration of his unfeigned assent to the same. And every person who shall be licensed or received as a lecturer in any church or place of public worship, the first time he preacheth, (before his sermon) shall publicly read the common prayers by the said book appointed to be read for that time, and then publicly declare his assent unto, and approbation of the said book, and to the use of all the prayers, rites, and ceremonies, forms and orders, therein contained and prescribed, according to the form before appointed; and also shall upon the first lecture day of every month, so long as he continues lecturer, &c. before his sermon, publicly read the common prayers and service in the said book appointed, and after such reading shall before the congregation

* "In any colleges, halls, or universities, within this realm" in 17 & 18 Car. 2. c. 6. 1r.

congregation declare his unfeigned assent and consent unto, and approbation of the said book, &c. And every such person who shall neglect to do the same, shall be disabled to preach any lecture or sermon in any church, &c. until he shall publicly read the common prayers and service appointed by the said book, and conform in all points to the things therein appointed. Provided (s. 20.) that if the sermon or lecture be to be preached or read in any cathedral or collegiate church or chapel, it shall be sufficient for the lecturer, openly at the time aforesaid, to declare his assent and consent to all things contained in the said book according to the form aforesaid. By s. 21. if any person, who is by this act disabled (or, as explained by the 15 Car. 2. c. 7. s. 7. Eng.* prohibited) to preach any sermon or lecture, shall, during the time that he shall continue so disabled, &c. preach any sermon or lecture, he shall suffer 3 months imprisonment in the common gaol; and any 2 justices of peace of any county, and the mayor or other chief magistrate of any city or town corporate, upon certificate from the ordinary of the offence committed, shall commit the person offending to gaol accordingly. By s. 22. at all times when any sermon or lecture is to be preached, the common prayers and service shall be publicly read by some priest or deacon in the church, or place of public worship, before such sermon or lecture be preached, and the lecturer shall be present at the reading thereof. By s. 23. this act shall not extend to the university churches, when any sermon or lecture is preached or read as the public university sermon or lecture.† By s. 24. the several laws now in force for the uniformity of prayer and administration of the sacraments, shall stand in force for the establishing and confirming of the said book, and no other. Provided (s. 25.) that in those prayers, litanies, and collects, which relate to the king, queen, or royal progeny, ‡ the names be altered or fitted to the present occasion

s. 20.

Proviso as to collegiate or cathedral churches.

s. 21.

*(15 Car. 2. c. 7. s. 7. Eng.)**Penalty upon persons disabled, or prohibited, that preach.*

s. 22.

Common prayer to be read before every lecture.

s. 23.

Proviso as to the universities.

s. 24.

Former statutes confirmed.

s. 25.

Litanies, &c. relating to the king, &c. from time to time altered.

* "Prohibited" is not in 17 & 18 Car. 2. c. 6. Ir.

† By s. 29. a special exception is made as to the king's professor of law in Oxford.

‡ "Or Lord Lieutenant" added in 17 & 18 Car. 2. c. 6. Ir.

occasion, according to the direction of lawful authority.

s. 31. And by s. 31. all subscriptions to the articles shall be applied (touching the 36th article,) unto the book of ordaining and consecrating of bishops, priests, and deacons, in this act mentioned. By s. 26. a true printed copy of said book shall, at the cost of the parishioners of every parish church, &c. be gotten, upon pain of forfeiture of £3. by the month, for so long time as they shall be unprovided thereof. * [† And by s. 28. the deans and chapters of every cathedral or collegiate church shall obtain, under the great seal, a printed copy of this act, and of the said book annexed hereunto, to be by the said deans and chapters preserved for ever, and to be produced in any court of record, as often as they shall be lawfully required. And there shall be delivered copies of this act, and of the same book, into the courts at Westminster, and into the tower of London, to be kept amongst the records, to be also produced as need shall require, which books shall be as good records as this book hereunto annexed,] ‡ The 17 & 18 Car. 2. c. 6. Ir. has followed this statute with such deviations as are noted in the margin.

Penalty upon school-masters teaching without license.

13 & 14 Car. 2. c. 4. s. 11. Eng.

With respect to the conformity required from school-masters, this act (13 & 14 Car. 2. c. 4. Eng.) provides, (s. 11.) that if any schoolmaster, or other person instructing youth in any private family as a tutor or schoolmaster, before license obtained from his arch-bishop, bishop, or ordinary of the diocess, according to the laws of this realm (for which he shall pay 12*d.* only) and before subscription made of conformity to the liturgy of the church of England as required by s. 10. (*vide* vol. 1. p. 325.) ; such school-master, &c. shall for the first offence suffer

* The said forfeiture to be levied by the church-wardens, and employed for the reparation of the church, and relief of the poor," in 17 & 18 Car 2. c. 6. Ir.

† This clause not in 17 & 18 Car. 2. c. 6. Ir.

‡ This act (s. 27.) provides that one book of common prayer in the Welsh tongue, and another in the English tongue, shall be in every church throughout Wales.

suffer 3 months imprisonment, and for every other such offence shall suffer 3 months imprisonment, and also forfeit to the king £5. Which clause is also contained in the 17 & 18 Car. 2. c. 6. Ir. And by the 17 Car. 2. c. 2. s. 4. Eng. it shall not be lawful for any person who shall not frequent divine service established by law, and carry himself reverently there, to teach school, or take boarders that are taught by him or any other, upon pain to forfeit £40. one third to his majesty, another to the poor of the parish, and the other to such as will sue for the same by action of debt, &c. in any court of record at Westminster, or before any justices of assize, &c. or justices of peace. No Irish statute contains any similar provision.

Penalty of non-conforming school-masters.

By the 22 Car. 2. c. 1. s. 1. Eng. if any person of the age of 16 years, or upwards, being a subject of this realm, shall be present at any meeting under pretence of any exercise of religion, in other manner than according to the liturgy and practice of the church of England, at which there shall be 5 persons assembled besides those of the household; any justice of peace, or the chief magistrate, of the place, are required upon proof made of such offence, either by confession of the party, or oath of 2 witnesses, or by notorious evidence, to make a record of such offence under their hands and seals, which record shall be a conviction of every such offender; and thereupon the justices, &c. shall impose a fine of 5s. for such offence, which record shall be certified at the next quarter sessions. And by s. 2. if such offender shall again commit the like offence, and be convicted, such offender shall incur the penalty of 10s. Which fines shall be levied by distress and sale of goods; or in case of the poverty of such offender, upon the goods of any other persons then convicted of the like offence at the same conventicle, at the discretion of the justice, &c. so as the sum to be levied on any one person amount not to above £10.; the monies to be delivered to the justice, &c. to be distributed, one third to the use of the king, which the justice shall pay into the court of quarter sessions, which court shall deliver the same to the sheriff, and one other to the use of the poor of the parish, and the other to the informers, as the justice shall appoint. By s. 3. every

Penalty for being present at conventicles, where liturgy of church of England not used.

22 Car. 2. c. 1. s. 1. Eng.

s. 2. *Penalty for 2nd offence.*

s. 3.

*Penalty of such
as preach, &c.
in such conven-
ticles.*

s. 4.

*Penalty for suf-
fering conventi-
cles in houses.*

s. 5.

Proviso.

s. 6.

*Appeals to whom
and in what
cases.*

s. 7.

*Appellant to en-
ter into a re-
cognizance.*

s. 8.

*Appeal how
lodged.*

s. 9.

*Justices, &c.
may break open
doors.*

s. 10.

*Proviso for
peers of the
realm.*

s. 11.

person who shall preach in any such meeting, and shall be convicted, shall forfeit for the first offence £20. and if his name be not known, or he be thought unable to pay, the justices, &c. shall levy the same upon the goods of any person present at the same conventicle; and if such offender shall again commit the like offence, he shall incur the penalty of £40. By s. 4. every person who shall willingly suffer such conventicle to be held in his house, or back-side, shall forfeit £20. as aforesaid. But by s. 5. no person shall be liable to pay above £10. for any one meeting, in regard of the poverty of other persons. By s. 6. where the penalty charged upon any offender exceeds 10s. it shall be lawful for him, within one week after the penalty paid or levied, to appeal in writing to the quarter sessions, to whom the justices, &c. shall return the money, and certify the evidence; whereupon such offender may plead, and have his trial by a jury; and the justices shall give treble costs against such offender for his unjust appeal, and no other court shall intermeddle. By s. 7. upon delivery of such appeal, the appellant shall enter, before the person convicting, into a recognizance to prosecute the appeal with effect, which recognizance the person convicting is required to certify to the quarter sessions. And by s. 8. such appeal shall be left with the person convicting, at the time of the making thereof. By s. 9. the justices of peace, or the constables and tything-men, by warrant may, after refusal to enter, break open any house where they shall be informed such conventicle shall be held, and take into their custody the persons there assembled; and the lieutenants, or any commission officer of the militia, or other his majesty's forces, and also the sheriffs and other magistrates, on certificate of any justice of peace, may dissipate or prevent all such meetings, and take into their custody such of the persons assembled as they shall think fit: Provided (s. 10.) that no dwelling house of any peer where he or his wife shall be resident, shall be searched but by warrant from his majesty, under his sign manual, or in the presence of the lieutenant, or one deputy lieutenant, or two justices of peace, and one of the *quorum*. By s. 11. if any constable, tything-man, church warden, or

or overseer of the poor, shall know, or be informed of, any such meetings held within his precinct, and shall not give information to some justice of peace, or chief magistrate, and endeavour the conviction of the parties, he shall forfeit £5. as aforesaid; and if any justice of peace shall wilfully omit the performance of his duty in execution of this act, he shall forfeit £100. one moiety to the king, and the other to the informer, to be recovered in any of his majesty's courts at Westminster.

By s. 12. any person sued for putting in execution any of the powers in this act, otherwise than upon appeal, may plead the general issue, &c. and the defendant shall have treble costs of nonsuit, discontinuance, verdict, or judgment upon demurrer. By s. 13. this act shall be construed beneficially for the suppression of conven-

ticles; and no record or warrant made by virtue of this act, or any proceedings thereupon, shall be reversed by reason of any default in form; and in case any person offending shall be an inhabitant of any other county or corporation, or shall fly into any other county, &c. the justice or chief magistrate before whom he shall be convicted, shall certify the same to any justice, &c. of such other county, &c. which justice is required to levy the penalties. By s. 14. no person shall be punished for any offence against this act, unless he be prosecuted within 3 months; and no person punished by virtue of this act shall be punished for the same offence by any other law.

By s. 15. every alderman of London shall have the same power within London, which any justice of peace hath by this act in any county. By s. 16. if the person con-

victed be a feme covert cohabiting with her husband, the penalties of 5s. and 10s. shall be levied upon the goods of the husband. And by s. 17. no peer shall be impris-

oned by virtue of this act. By s. 18. this act shall not invalidate his majesty's supremacy in ecclesiastical affairs.

But for the relief of protestant subjects dissenting from the church of England, the 1 W. & M. st. 1. c. 18. s. 4. Eng. provides, that persons that shall take the oaths (of allegiance and supremacy mentioned in the 1 W. & M. st. 1. c. 1. Eng.) and shall make and subscribe the declaration (against popery, mentioned in the

Penalty of officers omitting their duty.

s. 12.

Persons indemnified that put this act in execution.

s. 13.

This act interpreted beneficially.

s. 14.

Limitation for prosecutions.

s. 15.

Proviso for aldermen of London.

s. 16.

Femes covert.

s. 17.

Peers of the realm.

s. 18.

The king's supremacy.

Protestant dissenters taking the oaths of allegiance, &c. exempted from the penalties of non conformity.

occasion, according to the direction of lawful authority.

Proviso as to the 36th article of religion.
 s. 31. And by s. 31. all subscriptions to the articles shall be applied (touching the 36th article,) unto the book of ordaining and consecrating of bishops, priests, and deacons, in this act mentioned.

s. 26. By s. 26. a true printed copy of said book shall, at the cost of the parishioners of every parish church, &c. be gotten, upon pain of forfeiture of £3. by the month, for so long time as they shall be unprovided thereof. *

Copies of the book of common prayer to be provided in all parishes.
 s. 28. [† And by s. 28. the deans and chapters of every cathedral or collegiate church shall obtain, under the great seal, a printed copy of this act, and of the said book annexed hereunto, to be by the said deans and chapters preserved for ever, and to be produced in any court of record, as often as they shall be lawfully required. And there shall be delivered copies of this act, and of the same book, into the courts at Westminster, and into the tower of London, to be kept amongst the records, to be also produced as need shall require, which books shall be as good records as this book hereunto annexed,] ‡

Copies of this act, and the book of common prayer, by whom and how kept.
 The 17 & 18 Car. 2. c. 6. Ir. has followed this statute with such deviations as are noted in the margin.

Penalty upon school-masters teaching without license.
 13 & 14 Car. 2. c. 4. s. 11. Eng.
 With respect to the conformity required from school-masters, this act (13 & 14 Car. 2. c. 4. Eng.) provides, (s. 11.) that if any schoolmaster, or other person instructing youth in any private family as a tutor or schoolmaster, before license obtained from his arch-bishop, bishop, or ordinary of the diocess, according to the laws of this realm (for which he shall pay 12*d.* only) and before subscription made of conformity to the liturgy of the church of England as required by s. 10. (*vide* vol. 1. p. 325.) ; such school-master, &c. shall for the first offence suffer

* The said forfeiture to be levied by the church-wardens, and employed for the reparation of the church, and relief of the poor," in 17 & 18 Car 2. c. 6. Ir.

† This clause not in 17 & 18 Car. 2. c. 6. Ir.

‡ This act (s. 27.) provides that one book of common prayer in the Welsh tongue, and another in the English tongue, shall be in every church throughout Wales.

suffer 3 months imprisonment, and for every other such offence shall suffer 3 months imprisonment, and also forfeit to the king £5. Which clause is also contained in the 17 & 18 Car. 2. c. 6. Ir. And by the 17 Car. 2. c. 2. s. 4. Eng.

it shall not be lawful for any person who shall not frequent divine service established by law, and carry himself reverently there, to teach school, or take boarders that are taught by him or any other, upon pain to forfeit £40. one third to his majesty, another to the poor of the parish, and the other to such as will sue for the same by action of debt, &c. in any court of record at Westminster, or before any justices of assize, &c. or justices of peace. No Irish statute contains any similar provision.

Penalty of non-conforming school-masters.

By the 22 Car. 2. c. 1. s. 1. Eng. if any person of the age of 16 years, or upwards, being a subject of this realm, shall be present at any meeting under pretence of any exercise of religion, in other manner than according to the liturgy and practice of the church of England, at which there shall be 5 persons assembled besides those of the household; any justice of peace, or the chief magistrate, of the place, are required upon proof made of such offence, either by confession of the party, or oath of 2 witnesses, or by notorious evidence, to make a record of such offence under their hands and seals, which record shall be a conviction of every such offender; and thereupon the justices, &c. shall impose a fine of 5s. for such offence, which record shall be certified at the next quarter sessions. And by s. 2. if such offender shall again commit the like offence, and be convicted, such offender shall incur the penalty of 10s. Which fines shall be levied by distress and sale of goods; or in case of the poverty of such offender, upon the goods of any other persons then convicted of the like offence at the same conventicle, at the discretion of the justice, &c. so as the sum to be levied on any one person amount not to above £10.; the monies to be delivered to the justice, &c. to be distributed, one third to the use of the king, which the justice shall pay into the court of quarter sessions, which court shall deliver the same to the sheriff, and one other to the use of the poor of the parish, and the other to the informers, as the justice shall appoint. By s. 3. every

Penalty for being present at conventicles; where liturgy of church of England not used.

22 Car. 2. c. 1. s. 1. Eng.

Penalty for 2nd offence.

s. 3.

*Penalty of such
as preach, &c.
in such conven-
ticles.*

s. 4.

*Penalty for suf-
fering conventi-
cles in houses.*

s. 5.

Proviso.

s. 6.

*Appeals to whom
and in what
cases.*

s. 7.

*Appellant to en-
ter into a re-
cognizance.*

s. 8.

*Appeal how
lodged.*

s. 9.

*Justices, &c.
may break open
doors.*

s. 10.

*Proviso for
peers of the
realm.*

s. 11.

person who shall preach in any such meeting, and shall be convicted, shall forfeit for the first offence £20. and if his name be not known, or he be thought unable to pay, the justices, &c. shall levy the same upon the goods of any person present at the same conventicle; and if such offender shall again commit the like offence, he shall incur the penalty of £40. By s. 4. every person who shall willingly suffer such conventicle to be held in his house, or back-side, shall forfeit £20. as aforesaid. But by s. 5. no person shall be liable to pay above £10. for any one meeting, in regard of the poverty of other persons. By s. 6. where the penalty charged upon any offender exceeds 10s. it shall be lawful for him, within one week after the penalty paid or levied, to appeal in writing to the quarter sessions, to whom the justices, &c. shall return the money, and certify the evidence; whereupon such offender may plead, and have his trial by a jury; and the justices shall give treble costs against such offender for his unjust appeal, and no other court shall intermeddle. By s. 7. upon delivery of such appeal, the appellant shall enter, before the person convicting, into a recognizance to prosecute the appeal with effect, which recognizance the person convicting is required to certify to the quarter sessions. And by s. 8. such appeal shall be left with the person convicting, at the time of the making thereof. By s. 9. the justices of peace, or the constables and tything-men, by warrant may, after refusal to enter, break open any house where they shall be informed such conventicle shall be held, and take into their custody the persons there assembled; and the lieutenants, or any commission officer of the militia, or other his majesty's forces, and also the sheriffs and other magistrates, on certificate of any justice of peace, may dissipate or prevent all such meetings, and take into their custody such of the persons assembled as they shall think fit: Provided (s. 10.) that no dwelling house of any peer where he or his wife shall be resident, shall be searched but by warrant from his majesty, under his sign manual, or in the presence of the lieutenant, or one deputy lieutenant, or two justices of peace, and one of the *quorum*. By s. 11. if any constable, tything-man, church warden, or

or overseer of the poor, shall know, or be informed of, any such meetings held within his precinct, and shall not give information to some justice of peace, or chief magistrate, and endeavour the conviction of the parties, he shall forfeit £5. as aforesaid; and if any justice of peace shall wilfully omit the performance of his duty in execution of this act, he shall forfeit £100. one moiety to the king, and the other to the informer, to be recovered in any of his majesty's courts at Westminster.

By s. 12. any person sued for putting in execution any of the powers in this act, otherwise than upon appeal, may plead the general issue, &c. and the defendant shall have treble costs of nonsuit, discontinuance, verdict, or judgment upon demurrer. By s. 13. this act shall be construed beneficially for the suppression of conventicles; and no record or warrant made by virtue of this act, or any proceedings thereupon, shall be reversed by reason of any default in form; and in case any person offending shall be an inhabitant of any other county or corporation, or shall fly into any other county, &c. the justice or chief magistrate before whom he shall be convicted, shall certify the same to any justice, &c. of such other county, &c. which justice is required to levy the penalties. By s. 14. no person shall be punished for any offence against this act, unless he be prosecuted within 3 months; and no person punished by virtue of this act shall be punished for the same offence by any other law.

By s. 15. every alderman of London shall have the same power within London, which any justice of peace hath by this act in any county. By s. 16. if the person convicted be a feme covert cohabiting with her husband, the penalties of 5s. and 10s. shall be levied upon the goods of the husband. And by s. 17. no peer shall be imprisoned by virtue of this act. By s. 18. this act shall not invalidate his majesty's supremacy in ecclesiastical affairs.

But for the relief of protestant subjects dissenting from the church of England, the 1 W. & M. st. 1. c. 18. s. 4. Eng. provides, that persons that shall take the oaths (of allegiance and supremacy mentioned in the 1 W. & M. st. 1. c. 1. Eng.) and shall make and subscribe the declaration (against popery, mentioned in the

Penalty of officers omitting their duty.

s. 12.

Persons indemnified that put this act in execution.

s. 13.

This act interpreted beneficially.

s. 14.

Limitation for prosecutions.

s. 15.

Proviso for aldermen of London.

s. 16

Femes covert.

s. 17.

Peers of the realm.

s. 18.

The king's supremacy.

Protestant dissenters taking the oaths of allegiance, &c. exempted from the penalties of non conformity.

1W. & M.st.1. 30 Car. 2. st. 2. Eng.) as directed by s. 2. of this act,
c.18. s.4.Eng. shall not be liable to any penalties in the 35 Eliz. c. 1.

s. 5.

*Private meet-
ings excluded.*

s. 6.

*Saving for
tithes, &c.*

s. 8.

*Persons in or-
ders how exemp-
ted from the
penalties of cer-
tain acts.*

s. 9.

*Taking the oaths
&c. to be regis-
tered.*

*Meeting-doors
not to be locked.*

s. 10.

*Proviso as to
baptists.*

shall not be liable to any penalties in the 35 Eliz. c. 1. (*post* page 400.) nor in the 22 Car. 2. c. 1.; nor be prosecuted in any ecclesiastical court for their non-conforming to the church. But by s. 5. if any assembly of persons dissenting from the church, shall be had in any place for religious worship with the doors locked, barred, or bolted, during any time of such meeting, all persons at such meeting shall be liable to the penalties of all the said laws. And by s. 6. nothing herein contained shall exempt any persons from paying tithes, or other parochial duties, or any duties to the church or minister. By s. 8. no person dissenting from the church of England, in holy orders, or pretended holy orders, nor any preacher or teacher of any congregation of dissenting protestants, that shall make and subscribe the declaration, and take the said oaths, at the general or quarter sessions of the peace for the county, &c. where such person lives, and shall also declare his approbation of, and subscribe the articles of religion mentioned in the 13 Eliz. c. 12. except the 34th, 35th, and 36th, and these words of the 20th article, *viz.* "The church hath power to decree rites or ceremonies, and authority in controversies of faith; and yet" shall be liable to the penalties in the 17 Car. 2. c. 2. (*ante* p. 385.) nor the penalties in the 22 Car. 2. c. 1. (*ante* p. 385.) for preaching at any meeting for the exercise of religion; nor to the penalty of £100. mentioned in the 13 & 14 Car. 2. c. 4. (*ante* p. 383.) for officiating in any congregation allowed by this act. Provided (s. 9.) that the making and subscribing the said declaration, and the taking the oaths, and making the declaration of approbation and subscription to the said articles, be entered of record, for which 6*d.* shall be paid to the clerk of the peace: provided that such person shall not preach in any place but with the doors not locked, &c. By s. 10. every person in pretended holy orders, or preacher, &c. that shall subscribe the articles, except before excepted, and also except part of the 27th article touching infant baptism, and shall take the oaths, and make and subscribe the declaration, shall enjoy all the benefits which any other dissenting minister may enjoy

enjoy by this act. And by s. 11. every minister of any congregation, that shall take the oaths herein required, and make and subscribe the declaration, and subscribe such of the articles as are required by this act, shall be exempted from serving on any jury, or from being chosen to the office of church-warden, overseer of the poor, or any other parochial or ward office, or other office in any hundred, city, town, parish, &c. By s. 12. every justice of peace may require any person that goes to any meeting for exercise of religion, to make and subscribe the declaration (against popery), and take the said oaths, (of allegiance and supremacy), or declaration of fidelity (prescribed by s. 13.) in case such person scruples the taking of an oath; and upon refusal, such justice is required to commit such person to prison, and to certify his name to the next general or quarter sessions; and if such person shall, upon a 2nd tender at the sessions, refuse to make and subscribe the declaration, such person refusing shall be recorded, and he shall be taken for a popish recusant convict, and incur all the penalties of the said laws. And as to such dissenters as scruple the taking of any oath, it is provided (s. 13.) that every such person shall make and subscribe the aforesaid declaration (against popery) and also this declaration of fidelity, (as amended by the 8 Geo. 1. c. 6.) viz. "I A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to king George; and do solemnly, sincerely and truly, profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever: and I do declare that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm." And shall subscribe a profession of their christian belief, in these words: "I A. B. profess faith in God the father, and in Jesus Christ his
" eternal

s. 11.

Dissenting ministers exempt from offices, &c.

s. 12.

*Justices of peace may tender oaths, &c.**Penalty for refusing.*

s. 13.

*(8 Geo. 1. c. 6. s. 13. Eng.)**Declarations to be made and subscribed by quakers.*

“ eternal son, the true God, and in the Holy Spirit, one
 “ God, blessed for evermore; and do acknowledge the
 “ holy scriptures of the old and new testament to be
 “ given by divine inspiration.” Which declarations and
 subscription shall be made and entered upon record at
 the quarter sessions; and every such person that shall
 make and subscribe the 2 declarations, and profession,
 being thereunto required, shall be exempted from the
 penalties of the said statutes against popish recusants or
 protestant non-conformists, and also from the penalties
 of the 5 Eliz. c. 1. for refusing to take the oath men-
 tioned in that act, and from the penalties of the 13 &
 14 Car. 2. c. 1. and enjoy all other the benefits which
 any other dissenter shall enjoy by this act. And by
 s. 14. in case any person shall refuse to take the said
 oaths when tendered, which every justice of peace is
 empowered to do, such person shall not be admitted to
 take and subscribe the 2 declarations, unless he can,
 within 30 days after such tender of the declaration, pro-
 duce 2 protestant witnesses to testify on oath that they
 believe him to be a protestant dissenter, or a certificate
 under the hands of 4 protestants who are conformable to
 the church of England, or have taken the oaths and sub-
 scribed the declaration, and shall also produce a certi-
 ficate under the hands and seals of 6 men of the congre-
 gation to which he belongs, owning him for one of them.
 And by s. 15. until such certificate shall be produced, &c.
 the justice of peace shall take a recognizance with 2
 sureties in the sum of £50. for his producing the same;
 and if he cannot give such security, commit him to pri-
 son until he has produced such certificates, &c. But it
 is provided (s. 17.) that this act shall not give any ease or
 benefit to any papist, or popish recusant, or any person
 that shall deny in his preaching or writing the doctrine of
 the blessed Trinity, as declared in the articles of religion
 mentioned in the 13 Eliz. c. 12. Eng. except the 34th
 35th and 36th articles, and these words of the 20th arti-
 cle, viz. “ the church hath power to decree rites or ce-
 “ remonies, and authority in controversies of faith, and
 “ yet.” By s. 18. if any person shall willingly and of
 “ purpose

s. 14. & 15.

How purged
after refusal of
the oaths.

Recognizance to
be taken.

s. 17.

Papists, &c.
excepted.

s. 18.

purpose, maliciously or contemptuously, come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher, such person, upon proof thereof before any justice of peace, by 2 witnesses, shall find 2 sureties in the sum of £50. and in default of such sureties, shall be committed to prison till the next general or quarter sessions; and upon conviction of the offence at the said sessions, shall suffer the penalty of £20. to the use of the king. *Disturbers of religious worship, how punished.*

Provided (s. 19.) that no congregation for religious worship shall be allowed by this act, until the place of such meeting be certified to the bishop of the diocess, or to the archdeacon, or to the general or quarter sessions of the peace, and registered in the bishop's or archdeacon's court, or recorded at said sessions; and the register or clerk of the peace shall register the same, and give certificate thereof to such as shall demand the same, for which there shall be taken

s. 19.

6d. The 10 Ann. c. 2. s. 7. Eng. recites and confirms the 1 W. & M. st. 1. c. 18. *supra*, and provides (s. 8.) that if any person dissenting from the church of England, (not pretending to holy orders, nor preacher of any congregation,) who should have been entitled to the benefit of said act if such person had duly qualified himself, shall be prosecuted upon any of the penal statutes, from which protestant dissenters are exempted by said act, and shall, during such prosecution, take, make, and subscribe the oaths and declaration, or, being of the quakers, shall make and subscribe the declarations, and subscribe the profession of their christian belief, according to the act, or before any 2 justices of peace (who are required to take and return the same to the next quarter-sessions, to be recorded,) such persons shall be entitled to the benefit of said act, and shall be discharged from the penalties. And by s. 9. any preacher qualified according to the said act, shall be allowed to officiate in any congregation, although the same be not in the county wherein he was qualified; and such preacher, &c. shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace; and shall also before any justice of peace of the county where

Place for worship to be certified.

10 Ann. c. 2. s. 7. & 8. Eng.

Oaths &c. may be taken by protestant dissenters, during prosecution for non-conformity.

s. 9.

A dissenting preacher having qualified, may officiate in any other county.

5 Geo. 1. c. 4.
s. 2. Eng.

*Penalty of
mayor, &c. re-
siding in any
conventicle with
the ensigns of
his office.*

19 Geo. 3. c. 44.
s. 1. Eng.

*Protestant dis-
senting minis-
ters and school-
masters further
relieved.*

*Declaration sub-
stituted for sub-
scription to the
39 articles.*

*Exemption
from serving in
the militia.*

he shall officiate, make and subscribe such declaration, and take such oaths as are mentioned in the act, if required. The 5 Geo. 1. c. 4. s. 2. Eng. further provides, that if any mayor, bailiff or other magistrate, shall, knowingly or wilfully, be present at any meeting for religious worship (other than the church of England as by law established) in the gown or other peculiar habit of, or attended with the ensigns belonging to such his office, such mayor, &c. shall be disabled to hold such office, and be adjudged incapable to bear any public office. And by the 19 Geo. 3. c. 44. s. 1. Eng. every person dissenting from the church of England, in holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting protestants, who, if he scruple to declare and subscribe according to the 13 Eliz. c. 12. (*ante* p. 379.) shall take the oaths, and make and subscribe the declaration (against popery) required by the 1 W. & M. st. 1. c. 18. *supra*, and shall also make and subscribe a declaration in the words following: “ I
“ *A. B.* do solemnly declare in the presence of almighty
“ God, that I am a christian and a protestant, and as
“ such, that I believe that the scriptures of the old and
“ new testament, as commonly received among protes-
“ tant churches, do contain the revealed will of God;
“ and that I do receive the same as the rule of my doc-
“ trine and practice,” shall be entitled to all the exemp-
tions, privileges, and advantages, granted to protestant dissenting ministers by the 1 W. & M. st. 1. c. 18. and 10 Ann. c. 2.; and the justices at the general session of the peace are to tender and administer the said last mentioned declaration to such minister, upon his offering himself to make and subscribe the same, and thereof to keep a register; and such minister shall not give as a fee to any officer belonging to the court, above 6*d.* for his entry of taking, &c. said oaths, &c. nor above 6*d.* for any certificate thereof to be made out and signed by the officer of the said court; and every person qualifying himself as aforesaid, shall be exempted from serving in the militia; and shall also be exempted from any imprisonment or other punishment by the 13 & 14 Car. 2. c. 4. explained by the 15 Car. 2. c. 6. (*ante* page 383.) for preaching

preaching or officiating in any congregation of protestant dissenters, for the exercise of religion permitted by law.

And by s. 2. no dissenting minister, nor any other pro-

s. 2.

testant dissenting from the church of England, who shall take the aforesaid oaths, and make and subscribe

Dissenters allowed to instruct youth.

the above mentioned declaration against popery, and

the declaration before mentioned, shall be prosecuted

for teaching and instructing youth as a tutor or school-

master. But by s. 3. nothing in this act shall extend to

s. 3.

the enabling of any person dissenting, to hold the mas-

tership of any college or school of royal foundation, or

Exception of mastership of colleges, &c.

of any other endowed college or school for the education

of youth, unless the same shall have been founded since

the 1 W. & M. st. 1. c. 18. for the use of protestant dis-

senters. And by s. 4. the 1 W. & M. st. 1. c. 18. and

s. 4.

this act, shall be deemed public acts.

The 6 Geo. 1. c. 5. Ir. in analogy to the 1 W. & M.

st. 1. c. 18. Eng. and 10 Ann. c. 2. s. 8. Eng. *ante*, also

Dissenters taking certain oaths &c. not to be prosecuted in ecclesiastical courts for non-conformity.

provides, (s. 18.) that no dissenter who shall take the

oaths (of allegiance, supremacy, and abjuration,) and

subscribe the declaration (against popery), shall be pro-

secuted in any ecclesiastical court for non-conforming to

6 Geo. 1. c. 5. s. 18. Ir.

the church of Ireland as by law established. But by

s. 3. nothing herein shall exempt any such persons from

s. 3.

paying tithes or other parochial duties, or other duties

to the church or minister, nor from any prosecution in

Saving for tithes, &c.

any ecclesiastical court, or elsewhere, for the same.

By s. 2. if any assembly of persons dissenting from the

s. 2.

church of Ireland, shall be had in any place for religious

worship with the doors locked, barred, or bolted, the

Penalty for preaching with doors locked:

preacher or teacher in such assembly, shall forfeit £10.;

and every other person that shall be at such meeting,

And of those present.

shall forfeit 10s.; which penalties of £10. and 10s. shall

go, one moiety to the poor of the parish, and the other

to such person as shall sue for the same at the next ge-

neral assizes for such county, &c. by civil bill, or by

action of debt, bill, plaint, or information. By s. 8. no

s. 8.

person being a protestant dissenting from the church of

Ireland, in holy orders, or pretended holy orders, or any

Dissenting ministers, &c. may officiate in congregation permitted by this act.

preacher or teacher of any congregation of dissenting

protestants, that shall make and subscribe the declara-

tion

s. 9.
*Taking oaths,
&c. to be entered
at sessions.*

s. 10.
*Certain other
dissenters privi-
leged as dissent-
ing ministers.*

s. 11.
*Dissenting mi-
nisters, &c. ex-
empt from serv-
ing on juries,
&c.*

s. 13.
*Exception as to
papists.*

s. 14.
*Penalty of dis-
turbance of con-
gregations.*

tion aforesaid, and take the said oaths at the general or quarter sessions for the county, &c. where such person lives, shall be liable to the penalty of £100. or other penalties mentioned in the 17 & 18 Car. 2. c. 6. Ir. for consecrating or administering the sacrament of the Lord's supper, or for preaching or officiating in any congregation allowed by this act. Provided (s. 9.) that the making and subscribing said declaration, and the taking said oaths at such general quarter sessions, shall be then and there entered of record, for which 6*d.* shall be paid to the clerk of the peace. And by s. 10. whereas some dissenting protestants scruple the baptizing of infants; every person in pretended holy orders, or preacher or teacher, that shall make and subscribe the said declaration, and take the said oaths as aforesaid, shall enjoy all privileges and advantages which any other dissenting minister might enjoy by this act. And by s. 11. every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, shall be exempted from serving upon any jury, or from being chosen or appointed church-warden, overseer of the poor, or any other parochial or ward office, or other office in any barony, county, city, town, or parish. But it is provided (s. 13.) that this act shall not give any benefit to any papist, &c. or to any person who in his preaching or writing shall deny the doctrine of the blessed Trinity, as it is declared in the 39 articles referred to in the 17 & 18 Car. 2. c. 6. s. 11. Ir. By s. 14. if any person shall willingly and of purpose, maliciously or contemptuously, come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, such person, upon proof thereof by 2 witnesses, shall find 2 sureties in the sum of £50. to appear at the next general or quarter sessions for the county, and in default of such sureties shall be committed to prison till the next general or quarter sessions, and upon conviction shall suffer the penalty of £20. to the use of the king

king. Provided (s. 15.) that no assembly for religious worship shall be allowed by this act, until the place of such meeting shall be certified to the bishop of the diocess, or to the arch-deacon of the arch-deaconry, or to the justices of peace at the general or quarter sessions for the county, &c. in which such meeting shall be held, and registered in the bishop's or arch-deacon's court, or recorded at the general or quarter sessions; the register or clerk of the peace whereof shall register the same, and give certificate thereof to such person as shall demand the same, for which there shall be no greater fee than 6*d*. And this act provides (s. 19.) that if any person being a protestant dissenting from the church of Ireland, not being in holy orders, or pretended holy orders, nor preacher or teacher of any congregation, who would be entitled to the benefit of this act, if such person had duly qualified himself, shall be prosecuted for non-conformity, or upon any of the penal statutes from which protestant dissenters are exempted by this act, and shall, during such prosecution, take, make, and subscribe the said oaths and declaration, or, being of the quakers, shall make and subscribe the declaration according to s. 17. of this act, or before any 2 justices of peace, (who are required to return the same to the next quarter sessions to be recorded); such person shall be entitled to the benefit of this act, and shall be discharged from the penalties. And as to such dissenters, called quakers, who scruple the taking an oath, this act provides, (s. 17.) that every such person who shall make and subscribe the declaration following if thereunto required as aforesaid: (I *A. B.*

“ do truly and sincerely acknowledge, profess, testify
 “ and declare, that king George is lawful and rightful
 “ king of the realm of Great Britain and Ireland, and all
 “ other the dominions and countries to the realm of
 “ Great Britain belonging; and I do promise to be a
 “ true and faithful subject to him, and his successors in
 “ the protestant line, as now by law established, and
 “ that I will not plot or contrive any mischief or hurt to
 “ him or them, or be any way concerned therein, but
 “ will do my best endeavour to disclose and make known
 “ to

s. 15.

*Places of con-
gregation to be
certified.*

s. 19.

*Dissenters may
qualify during
prosecution for
non-conformity.*

s. 17.

*Quakers sub-
scribing the
following decla-
ration to be
exempt from
penalties, &c.*

“ to the king and his successors, or those in authority
 “ under him or them, all treasons and traitorous conspi-
 “ racies which I shall know to be against him or any of
 “ them : And I do believe in my conscience, [*that the
 “ person pretending to be the prince of Wales during
 “ the life of the late king James, and since his decease
 “ pretending to be, and taking upon him the style and ti-
 “ tle of king of England by the name of James the third,
 “ and of Scotland by the name of James the eighth,] hath
 “ not any right or title whatsoever to the crown of the
 “ realms of Great Britain or Ireland, or any of the do-
 “ minions of the realm of Great Britain belonging ; and
 “ I do renounce and refuse any allegiance and obedience
 “ to him. Nor do I believe the pope or bishop of Rome
 “ is Christ’s vicar on earth, or that he hath power to
 “ depose princes on any pretence whatsoever, or ab-
 “ solve me, or any of the king’s subjects, of their obe-
 “ dience to him or his successors, or any subjects of
 “ their obedience to their lawful prince : And I also
 “ believe the popish doctrine of purgatory, praying for
 “ the dead, indulgences and worshipping of images, of
 “ adoring and praying to the Virgin Mary, or other
 “ saints deceased, of transubstantiation or changing the
 “ elements of bread and wine into the body and blood of
 “ Christ, at or after the consecration thereof, by any
 “ person whatsoever, and of killing heretics, are false,
 “ erroneous, and contrary to the truth declared in the
 “ holy scriptures, and therefore believe the communion
 “ of the church of Rome is superstitious and idolatrous.
 “ And all this I do acknowledge, declare, and subscribe,
 “ without any equivocation or mental reservation, ac-
 “ cording to the true plainness and simplicity, and
 “ usual signification of the words,”) shall be exempted
 from all pains and penalties of the forementioned statutes,
 and shall enjoy all other the privileges and advantages,
 under the like conditions, which any other protestant
 dissenters shall enjoy by this act.

§ 5.

V. As to the offence of *recusancy*, or not repairing
 to church : It is one of the provisions (s. 14.) of the
 1 Eliz.

† This clause should be altered agreeable to the form of abjuration framed
 by the 6 Geo. 3. c. 53. Eng.

1 Eliz. c. 2. Eng. (the other clauses of which have been already stated*) that all persons shall diligently and faithfully endeavour to resort to their parish church or chapel accustomed, or, upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used, upon every Sunday and other days ordained and used to be kept as holidays, and then and there to abide orderly and soberly during the time of common prayer, preaching, or other service of God; upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit 12*d.* to be levied by the church-wardens of the parish, of the goods, lands, and tenements of such offender, to the use of the poor, by way of distress.† And by the 23 Eliz. c. 1. s. 5. Eng. every person above the age of 6 years which shall not repair to some church, chapel, or usual place of common prayer, but forbear the same contrary to the 1 Eliz. c. 2. shall forfeit for every month £20.‡ and every person so forbearing 12 months shall, after certificate thereof in writing made into the king's bench by the ordinary of the diocess, or a justice of assize, or a justice of the peace of the county where the offender shall dwell, be bound with 2 sureties in £200. at least, to the good behaviour, and so to continue bound until he conform himself and come to church. By s. 8. all offences against this act, or against 1 Eliz. c. 1. 5 Eliz. c. 1. or 15 Eliz. c. 2. touching acknowledging of her majesty's supreme government in causes ecclesiastical, or touching the service of God, or coming to the church, or establishment of true religion, shall be inquirable, as well before justices of peace as other justices, within one year and a day after such offence committed. By s. 9. justices of *oyer and terminer*, of assize, and gaol delivery, shall have power to inquire, &c. of all offences against this statute; and justices of peace in their quarter sessions shall have power to inquire, &c. of all offences against this act (except

Every person shall resort to church upon the holidays.

1 Eliz. c. 2. s. 14. Eng.

Penalty.

23 Eliz. c. 1. s. 5. Eng.

Penalty for a month's or year's absence.

s. 8. & 9.

Offences before whom inquirable, and when,

* *Ante* page 376. to 379.

† *Vide* 3 Jac. 1. c. 4. s. 27. 28 & 29. *post.* page 403.

‡ *Vide* 29 Eliz. c. 6. s. 4. p. 399. and 3. Jac. 1. c. 4. s. 8. to 12. *post.* p. 404.

- (except treason and misprision of treason, to which offences this act (s.2& 3.) relates. By s.12. every person which usually on the Sunday shall have in his house divine service established by law, and be thereat usually present, and shall not obstinately refuse to come to church, and shall also 4 times in the year be present at divine service in the church of the parish, or in some other church or chapel of ease, shall not incur any penalty by this act for not repairing to church. And by s. 10. every person guilty of any offence against this statute, other than treason and misprision of treason, which shall before he be indicted, or at his arraignment or trial, before judgment, submit and conform himself before the bishop of the diocess, or before the justices where he shall be indicted, &c. (having not before made like submission, being indicted for his first like offence) shall, upon his recognition of such submission in open assizes or sessions of the county where such person shall be resident, be discharged. By s. 11. all forfeitures of money limited by this act shall be divided in 3 parts, whereof one shall be to the queen to her own use, one other third to the queen for relief of the poor of the parish, to be delivered by warrant of the principal officers in the receipt of the exchequer, *and the other third to such person as will sue for the same in any court of record; and every person which shall forfeit any money by this act, and shall not pay the same within 3 months after judgment given, shall be committed to prison until he have paid the said sums, or conform himself to go to church. By s.13. every conveyance, bond, judgment, &c. to be had of covenous purpose to defraud any interest that may grow to the queen, or any other person, by any conviction by this statute, or 13 Eliz. c. 2. shall be void. By s. 15. this act shall not abridge the jurisdiction of ecclesiastical censures. The 29 Eliz. c. 6. s. 1. Eng. further enacts, that every conveyance, &c. of any lands, &c. made by any person who shall not repair to some church or usual place of common prayer, contrary to the 23 Eliz. c. 1. *supra*, and which is revocable
- s. 12.
Proviso for service in a man's private house.
- s. 10.
What conformity will purge an offender.
- s. 11.
Forfeitures how distributed.
- s. 13.
Conveyances to defeat forfeitures void.
- s. 15.
Proviso.
- 29 Eliz. c. 6.
s. 1. Eng.
Certain assurances made by recusants void.

* Vide 29 Eliz. c. 6. s. 7. Eng. post page 400.

cable at the pleasure of such offender, or in any wise directly or indirectly intended for the behoof or disposition of such offender, or whereby such offender, or his family, shall be maintained, shall be void as against the queen for levying the penalties. But by s. 8. this act shall not make void any grant or lease to be made without coven, whereupon the accustomed yearly rent is reserved, otherwise than to give title to the crown to have such rents. By s. 2. every conviction for any offence before mentioned shall be in the king's bench, or at the assizes or general gaol delivery, and shall be estreated into the exchequer before the end of the term next ensuing. And by s. 4. every such offender in not repairing to divine service as shall be once convicted, shall, in such of the terms of Easter or Michaelmas as shall be next after such conviction, pay into the receipt of the exchequer, £20. for every month contained in the indictment; and shall also for every month after such conviction, without any other indictment or conviction, pay into the exchequer, in every Easter term and Michaelmas term, £20. for every month; and if any default be made in any payment aforesaid, the queen may by process out of the exchequer seize all the goods and two parts of the lands, &c. liable to the penalties aforesaid, leaving the third part only of such lands, &c. for the maintenance of the offender and his family.* By s. 5. the indictment mentioning the not coming of such offender to the church of the parish where such person at any time before such indictment did keep residence, nor to any other church, chapel, or usual place of common prayer, shall be sufficient,† and it shall not be needful to mention that the offender was inhabiting within the queen's dominions; but if such offender was not within her majesty's dominions, he shall be relieved by plea, and not otherwise: And upon the indictment a proclamation shall be made at the same assizes or gaol delivery, (if the same be taken at any assizes,

s. 8.

Proviso for assurances bona fide,

s. 2.

Conviction of recusancy certified into the exchequer.

s. 4.

Penalty of recusant who shall not pay the forfeitures.

s. 5.

*What form of indictment sufficient.**Proclamation thereon.** *Vide 1 Jac. 1. c. 4. s. 5. post page 403.*† *Vide 3 Jac. 1. c. 4. s. 11. post page 404.*

s. 9.
Taking oaths,
&c. to be entered
at sessions.

s. 10.
Certain other
dissenters privi-
leged as dissent-
ing ministers.

s. 11.
Dissenting mi-
nisters, &c. ex-
empt from serv-
ing on juries,
&c.

s. 13.
Exception as to
papists.

s. 14.
Penalty of dis-
turbance of con-
gregations.

tion aforesaid, and take the said oaths at the general or quarter sessions for the county, &c. where such person lives, shall be liable to the penalty of £100. or other penalties mentioned in the 17 & 18 Car. 2. c. 6. Ir. for consecrating or administering the sacrament of the Lord's supper, or for preaching or officiating in any congregation allowed by this act. Provided (s. 9.) that the making and subscribing said declaration, and the taking said oaths at such general quarter sessions, shall be then and there entered of record, for which 6d. shall be paid to the clerk of the peace. And by s. 10. whereas some dissenting protestants scruple the baptizing of infants; every person in pretended holy orders, or preacher or teacher, that shall make and subscribe the said declaration, and take the said oaths as aforesaid, shall enjoy all privileges and advantages which any other dissenting minister might enjoy by this act. And by s. 11. every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, shall be exempted from serving upon any jury, or from being chosen or appointed church-warden, overseer of the poor, or any other parochial or ward office, or other office in any barony, county, city, town, or parish. But it is provided (s. 13.) that this act shall not give any benefit to any papist, &c. or to any person who in his preaching or writing shall deny the doctrine of the blessed Trinity, as it is declared in the 39 articles referred to in the 17 & 18 Car. 2. c. 6. s. 11. Ir. Bys. 14. if any person shall willingly and of purpose, maliciously or contemptuously, come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, such person, upon proof thereof by 2 witnesses, shall find 2 sureties in the sum of £50. to appear at the next general or quarter sessions for the county, and in default of such sureties shall be committed to prison till the next general or quarter sessions, and upon conviction shall suffer the penalty of £20. to the use of the king

king. Provided (s. 15.) that no assembly for religious worship shall be allowed by this act, until the place of such meeting shall be certified to the bishop of the diocess, or to the arch-deacon of the arch-deaconry, or to the justices of peace at the general or quarter sessions for the county, &c. in which such meeting shall be held, and registered in the bishop's or arch-deacon's court, or recorded at the general or quarter sessions; the register or clerk of the peace whereof shall register the same, and give certificate thereof to such person as shall demand the same, for which there shall be no greater fee than 6*d*. And this act provides (s. 19.) that if any person being a protestant dissenting from the church of Ireland, not being in holy orders, or pretended holy orders, nor preacher or teacher of any congregation, who would be entitled to the benefit of this act, if such person had duly qualified himself, shall be prosecuted for non-conformity, or upon any of the penal statutes from which protestant dissenters are exempted by this act, and shall, during such prosecution, take, make, and subscribe the said oaths and declaration, or, being of the quakers, shall make and subscribe the declaration according to s. 17. of this act, or before any 2 justices of peace, (who are required to return the same to the next quarter sessions to be recorded); such person shall be entitled to the benefit of this act, and shall be discharged from the penalties. And as to such dissenters, called quakers, who scruple the taking an oath, this act provides, (s. 17.) that every such person who shall make and subscribe the declaration following if thereunto required as aforesaid: (I *A. B.*

“ do truly and sincerely acknowledge, profess, testify
 “ and declare, that king George is lawful and rightful
 “ king of the realm of Great Britain and Ireland, and all
 “ other the dominions and countries to the realm of
 “ Great Britain belonging; and I do promise to be a
 “ true and faithful subject to him, and his successors in
 “ the protestant line, as now by law established, and
 “ that I will not plot or contrive any mischief or hurt to
 “ him or them, or be any way concerned therein, but
 “ will do my best endeavour to disclose and make known
 “ to

s. 15.

Places of congregation to be certified.

s. 19.

Dissenters may qualify during prosecution for non-conformity.

s. 17.

Quakers subscribing the following declaration to be exempt from penalties, &c.

“ to the king and his successors, or those in authority
 “ under him or them, all treasons and traitorous conspi-
 “ racies which I shall know to be against him or any of
 “ them : And I do believe in my conscience, [*that the
 “ person pretending to be the prince of Wales during
 “ the life of the late king James, and since his decease
 “ pretending to be, and taking upon him the style and ti-
 “ tle of king of England by the name of James the third,
 “ and of Scotland by the name of James the eighth,] hath
 “ not any right or title whatsoever to the crown of the
 “ realms of Great Britain or Ireland, or any of the do-
 “ minions of the realm of Great Britain belonging ; and
 “ I do renounce and refuse any allegiance and obedience
 “ to him. Nor do I believe the pope or bishop of Rome
 “ is Christ’s vicar on earth, or that he hath power to
 “ depose princes on any pretence whatsoever, or ab-
 “ solve me, or any of the king’s subjects, of their obe-
 “ dience to him or his successors, or any subjects of
 “ their obedience to their lawful prince : And I also
 “ believe the popish doctrine of purgatory, praying for
 “ the dead, indulgences and worshipping of images, of
 “ adoring and praying to the Virgin Mary, or other
 “ saints deceased, of transubstantiation or changing the
 “ elements of bread and wine into the body and blood of
 “ Christ, at or after the consecration thereof, by any
 “ person whatsoever, and of killing heretics, are false,
 “ erroneous, and contrary to the truth declared in the
 “ holy scriptures, and therefore believe the communion
 “ of the church of Rome is superstitious and idolatrous.
 “ And all this I do acknowledge, declare, and subscribe,
 “ without any equivocation or mental reservation, ac-
 “ cording to the true plainness and simplicity, and
 “ usual signification of the words,”) shall be exempted
 from all pains and penalties of the forementioned statutes,
 and shall enjoy all other the privileges and advantages,
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§ 5.

V. As to the offence of *recusancy*, or not repairing
 to church : It is one of the provisions (s. 14.) of the
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† This clause should be altered agreeable to the form of abjuration framed
 by the 6 Geo. 3. c. 53. Eng.

1 Eliz. c. 2. Eng. (the other clauses of which have been already stated*) that all persons shall diligently and faithfully endeavour to resort to their parish church or chapel accustomed, or, upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used, upon every Sunday and other days ordained and used to be kept as holidays, and then and there to abide orderly and soberly during the time of common prayer, preaching, or other service of God; upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit 12*d.* to be levied by the church-wardens of the parish, of the goods, lands, and tenements of such offender, to the use of the poor, by way of distress.† And by the 23 Eliz. c. 1. s. 5. Eng. every person above the age of 6 years which shall not repair to some church, chapel, or usual place of common prayer, but forbear the same contrary to the 1 Eliz. c. 2. shall forfeit for every month £20.‡ and every person so forbearing 12 months shall, after certificate thereof in writing made into the king's bench by the ordinary of the diocess, or a justice of assize, or a justice of the peace of the county where the offender shall dwell, be bound with 2 sureties in £200. at least, to the good behaviour, and so to continue bound until he conform himself and come to church. By s. 8. all offences against this act, or against 1 Eliz. c. 1. 5 Eliz. c. 1. or 15 Eliz. c. 2. touching acknowledging of her majesty's supreme government in causes ecclesiastical, or touching the service of God, or coming to the church, or establishment of true religion, shall be inquirable, as well before justices of peace as other justices, within one year and a day after such offence committed. By s. 9. justices of *oyer and terminer*, of assize, and gaol delivery, shall have power to inquire, &c. of all offences against this statute; and justices of peace in their quarter sessions shall have power to inquire, &c. of all offences against this act (except

Every person shall resort to church upon the holidays.

1 Eliz. c. 2. s. 14. Eng.

Penalty.

23 Eliz. c. 1. s. 5. Eng.

Penalty for a month's or year's absence.

s. 8. & 9.

Offences before whom inquirable, and when,

* *Ante* page 376. to 379.

† *Vide* 3 Jac. 1. c. 4. s. 27. 28 & 29. *post.* page 403.

‡ *Vide* 29 Eliz. c. 6, s. 4. p. 399. and 3. Jac. 1. c. 4, s. 8. to 12. *post.* p. 404.

- (except treason and misprision of treason, to which offences this act (s.2 & 3.) relates. By s.12. every person which usually on the Sunday shall have in his house divine service established by law, and be thereat usually present, and shall not obstinately refuse to come to church, and shall also 4 times in the year be present at divine service in the church of the parish, or in some other church or chapel of ease, shall not incur any penalty by this act for not repairing to church. And by
- s. 12.** *Proviso for service in a man's private house.*
- s. 10.** *What conformity will purge an offender.*
- s. 11.** *Forfeitures how distributed.*
- s. 13.** *Conveyances to defeat forfeitures void.*
- s. 15.** *Proviso.*
- 29 Eliz. c. 6. s. 1. Eng.** *Certain assurances made by recusants void.*
- s. 10. every person guilty of any offence against this statute, other than treason and misprision of treason, which shall before he be indicted, or at his arraignment or trial, before judgment, submit and conform himself before the bishop of the diocess, or before the justices where he shall be indicted, &c. (having not before made like submission, being indicted for his first like offence) shall, upon his recognition of such submission in open assizes or sessions of the county where such person shall be resident, be discharged. By s. 11. all forfeitures of money limited by this act shall be divided in 3 parts, whereof one shall be to the queen to her own use, one other third to the queen for relief of the poor of the parish, to be delivered by warrant of the principal officers in the receipt of the exchequer, *and the other third to such person as will sue for the same in any court of record; and every person which shall forfeit any money by this act, and shall not pay the same within 3 months after judgment given, shall be committed to prison until he have paid the said sums, or conform himself to go to church. By s.13. every conveyance, bond, judgment, &c. to be had of covenous purpose to defraud any interest that may grow to the queen, or any other person, by any conviction by this statute, or 13 Eliz. c. 2. shall be void. By s. 15. this act shall not abridge the jurisdiction of ecclesiastical censures. The 29 Eliz. c. 6. s. 1. Eng. further enacts, that every conveyance, &c. of any lands, &c. made by any person who shall not repair to some church or usual place of common prayer, contrary to the 23 Eliz. c. 1. *supra*, and which is revocable

* Vide 29 Eliz. c. 6. s. 7. Eng. post page 400.

cable at the pleasure of such offender, or in any wise directly or indirectly intended for the behoof or disposition of such offender, or whereby such offender, or his family, shall be maintained, shall be void as against the queen for levying the penalties. But by s. 8. this act shall not make void any grant or lease to be made without covin, whereupon the accustomed yearly rent is reserved, otherwise than to give title to the crown to have such rents. By s. 2. every conviction for any offence before mentioned shall be in the king's bench, or at the assizes or general gaol delivery, and shall be estreated into the exchequer before the end of the term next ensuing. And by s. 4. every such offender in not repairing to divine service as shall be once convicted, shall, in such of the terms of Easter or Michaelmas as shall be next after such conviction, pay into the receipt of the exchequer, £20. for every month contained in the indictment; and shall also for every month after such conviction, without any other indictment or conviction, pay into the exchequer, in every Easter term and Michaelmas term, £20. for every month; and if any default be made in any payment aforesaid, the queen may by process out of the exchequer seize all the goods and two parts of the lands, &c. liable to the penalties aforesaid, leaving the third part only of such lands, &c. for the maintenance of the offender and his family.* By s. 5. the indictment mentioning the not coming of such offender to the church of the parish where such person at any time before such indictment did keep residence, nor to any other church, chapel, or usual place of common prayer, shall be sufficient,† and it shall not be needful to mention that the offender was inhabiting within the queen's dominions; but if such offender was not within her majesty's dominions, he shall be relieved by plea, and not otherwise: And upon the indictment a proclamation shall be made at the same assizes or gaol delivery, (if the same be taken at any assizes,

s. 8.

Proviso for assurances bona fide,

s. 2.

Conviction of recusancy certified into the exchequer.

s. 4.

Penalty of recusant who shall not pay the forfeitures.

s. 5.

*What form of indictment sufficient.**Proclamation thereon.** *Vide 1 Jac. 1. c. 4. s. 5. post page 403.*† *Vide 3 Jac. 1. c. 4. s. 11. post page 404.*

assizes, &c.) by which it shall be commanded, that the body of such offender be rendered to the sheriff before the next assizes, &c. and if at the next assizes, &c. the offender shall not make appearance, upon such default recorded, the same shall be a sufficient conviction. Provided (s. 6.) that whensoever any such offender shall make submission, and become conformable, or shall die, no forfeiture or seizure of the lands after such submission and conformity, or death, and satisfaction of all arrears of £20. monthly, shall ensue. By s. 7. it shall be lawful for the lord treasurer, chancellor, and chief baron of the exchequer, or two of them, to dispose of the 3d part of the £20. for every month, for the maintenance as well of the poor, and of the houses of correction, as of impotent and maimed soldiers. By s. 9. this act shall not continue any seizure of any lands of such offender, in her majesty's hands, after the offender's death, which lands he shall be seised of only for his life, or in right of his wife. It is further enacted by the 35 Eliz. c. 1. s. 1. Eng. that if any person above the age of 16 years shall obstinately refuse to repair to some church, or usual place of common prayer established by law, and shall forbear to do the same by the space of a month, without any lawful cause, or shall by printing, writing, or express words, advisedly practise, or go about to persuade any other, to deny and impugn the authority in cases ecclesiastical annexed to the imperial crown of this realm, or to that end shall advisedly and maliciously move any other person to forbear coming to church to hear divine service, or to receive the communion according to law, or to be present at any unlawful conventicles or meetings, under colour of any exercise of religion contrary to law; or if any person which shall obstinately refuse to repair to some church or usual place of common prayer, and shall forbear by the space of a month to hear divine service, shall willingly be present at any such conventicles or meetings, under colour of such exercise of religion contrary to law, every person so offending, and being thereof convicted, shall be committed to prison until they conform and yield themselves to come to

some

s. 6.

The offender submitting, or dying, no forfeiture shall ensue.

s. 7.

The 3d part of the forfeiture to go to the poor.

s. 9.

Proviso as to estates for life.

35 Eliz. c. 1.
s. 1. Eng.

Further punishment of persons refusing to come to church, or persuading others not to repair to church, &c.

Penalty for being present at unlawful conventicles.

some church, or usual place of common prayer, and hear divine service accordiug to law, and make such open submission and declaration of their conformity as in this act is appointed. And by s. 2. if any such persons shall not, within 3 months after they shall be convicted, conform themselves to the obedience of the laws in coming to church to hear divine service, and in making such public confession and submission as hereafter is appointed, being required by the bishop of the diocess, or any justice of peace, or by the minister or curate of the parish; such offender being thereunto required by any justice of peace, shall, upon oath before the justices in the quarter-sessions, or at the assizes and gaol-delivery, abjure this realm, and all the queen's dominions for ever, unless her majesty shall license the party to return; and thereupon shall depart out of this realm at such port as shall be assigned by the said justices, unless he be stayed by such lawful means as by common law are allowed in cases of abjuration for felony; and in such cases, then within such time after as the common law requireth in cases of abjuration for felony; and the justices of peace before whom any such abjuration shall be made, shall cause the same to be entered of record, and certify the same at the next assizes or gaol-delivery. By s. 3. if any such offender refuse to make abjuration, or shall not go to such haven as is appointed, and from thence depart out of this realm, or shall return into her majesty's dominions without her majesty's license, he shall be adjudged a felon without benefit of clergy. By s. 4. if any person that shall offend against this act, shall, before he be required to make abjuration, repair to some parish church on some Sunday or festival, and hear divine service, and at service time, before the sermon, or reading of the gospel, make public submission and declaration of his conformity to her majesty's laws, the same offender shall be discharged of all penalties; the submission to be as followeth: "I, *A. B.* do humbly confess and acknowledge, that I have grievously offended God, in contemning her majesty's godly and lawful government

s. 2.

Obstinate recusants shall abjure the realm.

s. 3.

Punishment for refusing to abjure, not departing, or returning without license.

s. 4.

What submission shall purge the offender.

- “ government and authority, by absenting myself from
 “ church, and from hearing divine service, contrary to
 “ the godly laws and statutes of this realm, and in using
 “ and frequenting disordered and unlawful conventicles
 “ and assemblies, under pretence and colour of exercise
 “ of religion : And I am heartily sorry for the same,
 “ and do acknowledge and testify in my conscience,
 “ that no other person hath or ought to have any power
 “ or authority over her majesty : And I do promise and
 “ protest without any dissimulation, or any colour or
 “ means of any dispensation, that from henceforth I
 “ will from time to time obey and perform her majesty’s
 “ laws and statutes, in repairing to the church, and
 “ hearing divine service, and do my uttermost endea-
 “ vour to maintain and defend the same.” And by s. 5.
- s. 5. every minister or curate of every parish where such sub-
The minister shall enter the submission in a book. mission shall be made, shall enter the same in a book, and within 10 days certify the same to the bishop.
- s. 6. Provided (s. 6.) that if any offender, after such submis-
Proviso for cases of relapse. sion made, fall into relapse, or obstinately refuse to repair to church, &c. or shall be present at any such conventicles, &c. under pretence of exercise of religion, contrary to law, such offender shall
- s. 9. lose all benefit of the submission. By s. 9. the said
Remedy to recover forfeitures. forfeitures may be recovered to her majesty’s use, in K. B. C. B. or Exc. as any other debt may be. And by
- s. 10. s. 10. the third part of the penalties shall be employed to
Penalties how disposed of. such charitable uses as is appointed in the 29 Eliz. c. 6. *supra.*
- s. 11. By s. 11. no popish recusant, or feme covert,
Proviso as to popish recusants, and femes covert. shall be compelled to abjure by this act. By s. 12,
- s. 12. every person that shall abjure by force of this act, or
Forfeiture of him who abjureth, or refuseth to abjure. refuse to abjure, shall forfeit to her majesty all his goods, and shall lose all his lands, &c. during the life of such offender ; but the wife of such offender shall not lose her dower, nor any corruption of blood be, by reason of any offence mentioned in this act. The following clauses of
- the 1 Jac. 1. c. 4. Eng. and 3 Jac. 1. c. 4. Eng. also re-
 late to recusants in general. By the 1 Jac. 1. c. 4. s. 2.
- if any recusant shall submit or reform himself, and
 become obedient to the laws of England, and repair to
 church
- 1 Jac. 1. c. 4.
 s. 2. Eng.
- A recusant con-
 forming himself
 shall be dischar-
 ed.*

church, such person shall be freed from the penalties of recusancy. By s. 3. if any recusant die, his heir being no recusant, such heir shall be discharged of all penalties in respect of his ancestor's recusancy. And if the heir be a recusant, and after shall become conformable and repair to church, and shall take the oath of supremacy before the archbishop or bishop, such heir shall be discharged of all penalties. And by s. 4. if the heir of any recusant shall be within the age of 16 years at the decease of his ancestor, and shall after his age of 16 years be a recusant, such heir shall not be discharged of the penalties, until he submit or reform himself, and repair to church, and take the oath of supremacy. By s. 5. where any seizure shall be had of the two parts of any lands, &c. leases or farms, for the non-payment of the £20. *per* month, such two parts shall according to the extent go towards satisfaction of the £20. *per* month; and the third shall not be extended or seized: and where such seizure shall be had of the two parts, and such recusant shall die, the two parts shall continue in his majesty's possession until the debt be paid; and his majesty shall not seize or extend any third part descending to his heirs, either by reason of the recusancy of his ancestor, or the recusancy of such heir. And the 3 Jac. 1. c. 4. s. 7. Eng. further enacts, that the justices of assize and gaol delivery, and justices of peace at their sessions, shall have power to inquire, &c. of all recusants and offences, [**as well for not receiving the sacrament according to this law, as*] for not repairing to church according to former laws; and shall have power at their assizes and sessions (in which any indictment for not repairing to church, or not receiving the sacrament, shall be taken,) to make proclamation, by which it shall be commanded that the body of every such offender shall be rendered to the sheriff of the county, or bailiff, or other keeper of the gaol of the liberty, before the next assizes or the next quarter-sessions;

s. 3. & 4.

Proviso as to heirs of recusants.

s. 5.

The two parts of a recusant's lands shall remain in the king's hands to pay arrearages,

3 Jac. 1. c. 4. s. 7. Eng.

What justices shall try recusants.

* This sentence refers to the other clauses which respect popish recusants convict.

Effect of not appearing pursuant to proclamation.

s. 8.

Penalty of a recusant convict.

s. 9.

Conviction to be certified into the exchequer.

s. 10 & 11.

The king may take 2 parts of a recusant's lands, instead of £20. a month.

s. 12.

Proviso as to mansion house of recusant. Leases of the 2 parts how to be.

s. 16.

No indictment of a recusant shall be avoided for want of form.

s. 17.

He that conformeth may traverse indictment.

sessions; and if at the next assizes or sessions the offender shall not make appearance, such default recorded shall be a conviction in law of the offence. By s. 8. every offender in not repairing to divine service, that shall be once convicted, shall, in such of the terms of Easter and Michaelmas as shall be next after such conviction, pay into the receipt of the exchequer, £20. for every month contained in the indictment, and for every month after such conviction, (without any other indictment or conviction) £20. except where the king shall refuse the same, and take 2 parts of the lands and leases of such offender, till he conform himself, and come to church. By s. 9. every conviction recorded for any offence before mentioned, shall be certified into the exchequer before the end of the term following; and if default be made in any payment aforesaid, the king may by process of the exchequer seize the goods, and 2 parts of the lands, &c. and leases of such offender, leaving the 3rd part for the maintenance of the offender, and his family. By s. 11. the king shall have power to refuse the penalty of £20. a month, and take 2 parts in 3 of the lands, &c. and leases that shall be or come to the offenders, till every such offender conform himself, in lieu of the £20. monthly; saving to all persons (other than the offender, and all claiming in trust for him,) all rights had before such seizure. But by s. 12. the king shall leave to such offender his chief mansion-house, as part of his 3rd part, and shall not lease the 2 parts to or for the use of any recusant; and whosoever shall take the same of his majesty, shall give security not to commit nor suffer waste, as by the court of exchequer shall be allowed. By s. 16. no indictment for not repairing to church, but absenting himself one month, or for not receiving the sacrament, nor any proclamation, outlawry, or other proceeding thereupon, shall be avoided or reversed by any default in form or other defect, other than by traverse to the point of not coming to church, or not receiving the sacrament. Provided (s. 17.) that if any person so indicted shall submit and conform himself, and repair to the parish church, and if there be none such,

such, then to the church next adjoining to his dwelling, and receive the sacrament according to the laws of England, such person shall be admitted to avoid, &c. the said indictment, and all proceedings thereupon. By s. 27. if any subject of this realm shall not resort s. 27. every Sunday to some church, or other place appointed for common prayer, and there hear divine service, it shall be lawful for any one justice of peace, of that *Weekly forfeiture for not repairing to church.* limit, &c. where the said party shall dwell, upon proof of such default, by confession or oath of witness, to call the party before him; and if he shall not make a sufficient excuse, it shall be lawful for the justice to give warrant to the church-warden of the parish wherein the party shall dwell, to levy 12*d.* for every default, by distress and sale of goods; and in default of distress, it shall be lawful for the justice to commit such offender to prison until payment; which forfeiture shall be for the use of the poor of the parish, wherein the offender shall be resident or abiding at the time of such offence. Provided (s. 28.) that no man be impeached upon this s. 28. clause, except he be called in question within 1 month *Limitation.* after the default. And by s. 29. no man being punished s. 29. according to this branch, shall, for the same offence, be punished by the forfeiture of 12*d.* upon the 1 Eliz. c. 2. *One punishment for 1 offence.* (*ante* p. 397.) By s. 36. every offence against this act s. 36. shall be inquired of, &c. before the justices of the king's bench, justices of assize and gaol-delivery; and all offences, (other than treason,) shall be inquired of, &c. *Offences where tried.* before the justices of peace in their quarter-sessions. By s. 38. if any action be brought against any person s. 38. doing any thing concerning the execution of this statute, every defendant in such action may plead the general *Pleading under this statute.* issue. And by s. 39. this act shall not abridge the jurisdiction of the ecclesiastical censures. s. 39. *Proviso.*

Next as to popish recusants: By the 35 Eliz. c. 2. *Popish recusants convicted shall not go 5 miles from home.* s. 3. Eng. every person above the age of 16 years, born within her majesty's dominions, or made denizen, and having any certain place of abode within this realm, which 35 Eliz. c. 2. being a popish recusant, shall be convicted for not s. 3. Eng. repairing to church, or usual place of common prayer, and, being within this realm, shall, within 40 days after conviction

*vide 3 Jac. 1.
c. 5. s. 7. post.
Penalty.

s. 5.

*To whom the
forfeitures of re-
cusants copy-
holders shall go.*

s. 6.

*How recusants
shall notify their
repairing to
their dwellings.*

s. 7.

*Recusants names
certified to jus-
tices.*

s. 8.

*Certain recu-
sants to abjure
and depart the
realm.*

viction (if they be not restrained by imprisonment, or by
her majesty's command, or by order of 6 of the privy
council, or by sickness, and in such cases within 20 days
after they shall be enlarged, and shall be able to travel,) repair to their place of abode, and shall not at any time
after remove above *5 miles from thence, upon pain to
forfeit all their goods, and also forfeit to the crown all
the lands, &c. of every such person, during the life of the
offender. And by s. 5. every such offender which shall
have any lands by copy of court-roll, or other customary
tenure at the will of the lord, according to the custom of
any manor, shall forfeit all his lands, holden by copy or
court-roll, &c. during the life of such offender, (if his
estate so long continue) to the lords of whom the same
be holden, if the lord be not a popish recusant convict,
nor seised upon trust to the use of any such recusant,
and in such case the forfeiture to be to the queen. By
s. 6. such persons as by this act are to repair to their
place of abode, shall, within 20 days after their coming
to the said places, notify their coming thither, and pre-
sent themselves, and deliver their names in writing to
the minister or curate of the parish, and to the constable,
headborough, or tithingman of the town, and thereupon
the minister shall enter the same in a book. And by
s. 7. the minister and constable, &c. shall certify the
same to the justices of peace at the next quarter-sessions,
and the justices shall cause the same to be entered by the
clerk of the peace. By s. 8. if any such popish recu-
sant (not being a feme covert, and not having lands or
annuities of an absolute estate of freehold, of the
yearly value of 20 marks, or goods above the value of
£40.) shall not, within the time in this act limited, repair
to his place of abode, and notify his coming to the
minister and constable as aforesaid, or shall pass above
5 miles from the same, and shall not, within 3 months
after such person shall be apprehended, conform to the
obedience of the laws in coming to church, and making
public submission, being required by the bishop of the
diocese, or any justice of peace of the county where such
person shall be, or by the minister, &c. of the parish; such
offender, being required by 2 justices of peace, or co-
roner

roner, of the county, shall upon oath abjure this realm, and all the queen's dominions for ever, and shall depart out of this realm at such port, and within such time, as shall be assigned by the justices or coroner; unless they be stayed by such causes as are allowed in cases of abjuration for felony; and in such cases within such time after, as the law requireth in case of abjuration for felony. And by s. 9. every justice of peace and coroner,

s. 9.

before whom such abjuration shall be made, shall cause the same to be entered of record, and certify the same

Abjuration recorded and certified.

at the next assizes or gaol-delivery. By s. 10. if such

s. 10.

offender shall refuse to make abjuration, or shall not go

to such haven, and depart out of this realm, or shall

Felony for a recusant not to abjure, &c.

return into any of her majesty's dominions, without her

majesty's license, he shall be adjudged a felon without

benefit of clergy. But by s. 13. if any person so res-

s. 13.

trained shall be urged by process, or be bound without

Proviso.

fraud, to make appearance in any of her majesty's

courts, or shall be required by 3 of her majesty's privy

council, or by any 4 commissioners assigned by her

majesty, to make appearance before her majesty's coun-

cil or commissioners, such person shall not incur any

forfeiture for travelling to make appearance accordingly.

*And by s. 14. if any person so restrained shall be bound

**Vide 3 Jac. 1 c. 5. s. 7. post.*

to yield his body to the sheriff upon proclamation,

s. 14.

he shall not incur any forfeiture for travelling for that

Proviso.

purpose. And it is provided (s. 15.) that if any person

s. 15.

that shall offend against this act, shall, before he be

convicted, come to some parish church on some Sunday

What submission shall purge offender.

or other festival, and hear divine service, and at service-

time, before the sermon, or reading of the gospel, make

public submission and declaration of his conformity to

her majesty's laws, he shall be discharged of all forfei-

tures; the submission to be made as followeth: I *A. B.*

" do humbly confess and acknowledge, that I have

" grievously offended God, in contemning her majesty's

" godly and lawful government and authority, by ab-

" senting myself from church, and from hearing divine

" service, contrary to the godly laws and statutes of this

" realm: And I am heartily sorry for the same, and do

" acknowledge

“ acknowledge and testify in my conscience, that the
 “ bishop or see of Rome hath not, nor ought to have,
 “ any power or authority over her majesty, or within
 “ any her majesty’s realms or dominions: And I do
 “ promise and protest without any dissimulation, or any
 “ colour or means of any dispensation, that from hence-
 “ forth I will, from time to time, obey and perform her
 “ majesty’s laws and statutes, in repairing to the church
 “ and hearing divine service, and do my uttermost en-
 “ deavour to maintain and defend the same.” By s. 16.
 every minister of every parish where such submission
 shall be so made, shall enter the same in a book, and
 within 10 days certify the same to the bishop. By s. 17,
 if any offender, after such submission made, shall fall
 into relapse, or become a recusant, such offender shall
 lose all benefit of his submission. And by s. 18. every
 woman married shall be bound by every article in this
 statute, other than the articles of abjuration; and no
 woman married shall be compelled to abjure. The 3
 Jac. 1. c. 4. Eng. several clauses of which have been
 stated (p. 403, &c.) further enacts (s. 2.) that every popish
 recusant convict, which shall conform and repair to
 church, shall, within the first year after he shall so con-
 form himself, and once in every year following, receive
 the sacrament of the Lord’s supper, in the church of that
 parish where he shall most usually abide. And by s. 3.
 if there be no such parish church, then in the church
 next adjoining to the place of his abode. And if any
 recusant so conformed shall not receive the sacrament,
 he shall forfeit for the first year £20, and for the second
 year £40. and for every year after £60. until he shall
 have received the sacrament; and if after he shall have
 received the sacrament, he shall eftsoons offend in not
 receiving the sacrament by one whole year, he shall
 forfeit £60. one moiety to the king, and the other moi-
 ety to him that will sue in any of the courts at West-
 minster, or before justices of assize or gaol delivery, or
 before justices of peace at their quarter sessions, by ac-
 tion of debt, &c. By s. 4. the church-wardens and
 constables of every town, parish, or chapel, or if there
 be

s. 16.

*Submission en-
tered and certi-
fied.*

s. 17.

*Proviso for case
of relapse.*

s. 18.

*Proviso as to
femes covert.*3 Jac. 1. c. 4.
s. 2. Eng.*Popish recusants
convict conform-
ing shall receive
the sacrament.*

s. 3.

*Forfeiture for
not receiving it
yearly.*

s. 4.

be none, then the chief constables of the hundred, shall, *Absence of popish recusants to be presented monthly.*
 once every year, present the monthly absence from church of all popish recusants, and the names of the children of the said recusants, being of the age of 9 years and upwards, abiding with their parents, and the age of the children, and the names of the servants, of such recusants, at the quarter-sessions. And by s. 5. *s. 5.*
 such presentments shall be recorded by the clerk of the peace, or town-clerk, without fee. And in default of *Presentments recorded.*
 such presentment, the church-wardens, constables or high constables, shall forfeit 20s. and in default of such recording, the clerk of the peace or town-clerk shall forfeit 40s. By s. 6. upon every presentment of such *s. 6.*
 monthly absence, whereupon such party shall be indicted or convicted, the church-wardens, &c. making *Reward of church wardens and constables.*
 such presentments, shall have a reward of 40s. to be levied out of the recusant's goods and estate, as by the justices shall be by warrant appointed. By s. 35. upon *s. 35.*
 any lawful writ or process for the apprehending of any popish recusant standing excommunicated for recusancy, *Houses may be broke open to take recusants excommunicate.*
 it shall be lawful for the officer, if need be, to break open any house wherein such person shall be, or to raise the power of the county for the apprehending of such person. This act provides (s. 40.) that no person shall *s. 40.*
 be charged with any forfeiture by this act, for his wife's offence in not receiving the sacrament during her marriage, nor shall any woman be charged with any penalty by this act, for such offence which shall happen during her marriage. But the 3 Jac. 1. c. 5. s. 10. Eng. enacts, *3 Jac. 1. c. 5. s. 10. Eng.*
 that every married woman being a popish recusant convicted, (her husband not standing convicted of popish recusancy) which shall not conform herself, but shall *Forfeiture of recusant widows.*
 forbear to repair to some church or usual place of common prayer, and there to hear divine service and sermon, and within the year receive the sacrament, by the space of one year next after the death of her husband, shall forfeit the profits of 2 parts of her jointure, and 2 parts of her dower, and be disabled to be executrix or administratrix of her husband, and to have any part of her husband's goods. And by the 7 Jac. 1. c. 6. s. 28. *7 Jac. 1. c. 6. s. 28. Eng.*
 Eng. if any married woman, convicted as a popish recusant

*Penalty of
femes covert
recusants.*

cusant for not coming to church, shall not, within 3 months after conviction, conform herself, and repair to church and receive the sacrament, she shall be committed to prison by one of the privy council, or by the bishop, if she be a baroness, or if she be under that degree, by 2 justices of peace, (one of the *quorum*) until she shall conform herself, unless the husband of such wife shall pay to the king for every month £10. or the 3rd part of all his lands, at the choice of the husband, so long as she remaining a recusant shall continue out of prison. But the principal statute imposing penalties and disabilities

3 Jac. 1. c. 5.
s. 2. Eng.

on popish recusants, is the 3 Jac. 1. c. 5. Eng. which enacts (s. 2.) that no popish recusant convicted, shall

*Popish recusants
convict shall not
come into the
king's presence.*

come into the house where the king or his heir apparent shall be, unless he be commanded by the king, or by warrant from the privy council, upon pain to forfeit £100. the one moiety to the king, and the other to him

Penalty.

s. 4.

*Nor dwell with-
in 10 miles of
London.*

that will sue for the same, by action of debt, &c. in any of his majesty's courts of record. By s. 4. all popish recusants which shall dwell within London, or the liberties thereof, or within 10 miles of said city, which shall be indicted or convicted of recusancy, or which shall not repair to some church or chapel, and hear divine service, but shall forbear the same 3 months, shall, within 10 days after such indictment or conviction, depart from London, and 10 miles compass of the same, and shall deliver their names to the lord mayor in case such recusant shall dwell in London, &c.; and in case he shall dwell in any other county within 10 miles of the said city, then to the next justice of peace within 10 days after such indictment or conviction, upon pain to forfeit

Penalty.

s. 7.

*Recusants how
licensed to go 5
miles from home.*

£100. the one moiety to the king, and the other to him that will sue for the same in any of the king's courts of record. By s. 7. it shall be lawful for the king, or for 3 of his privy council, to give license to a recusant to go out of the compass of the 5 miles from his place of abode. And if any of the persons confined by the 35 Eliz. c. 2. (*ante* p. 406.) shall have necessary occasion to go out of the compass of the said 5 miles, upon license of 4 justices of the peace, with the assent of the bishop, or of the lieutenant or any deputy lieutenant of the county

county, residing within the county, (in which license shall be specified the cause of the license, and the time how long the party shall be absent,) such person may go about such his business, he first taking his oath before the justices, or any of them, that he had truly informed them of the cause of his journey, and that he shall not make any causeless stays; and every license in this behalf, contrary to this statute, shall be void. And every person so confined, which shall go above 5 miles from the place whereunto he shall be confined, not having such license, and not having taken such oath, shall forfeit as a recusant convict, and passing above 5 miles from the place whereunto he shall be confined, should do by the 35 Eliz. c. 2. *ante.* By s. 8. no recusant convict shall practise the common law as a counsellor, clerk, attorney or solicitor, nor shall practise the civil law as advocate or proctor, nor practise physic, nor use the trade of an apothecary, nor shall be judge, minister, or clerk, or steward of any court, or keep any court, nor shall be register or town-clerk, or other officer in any court, nor shall bear any office, as captain, lieutenant, corporal, serjeant, ancient-bearer, or other office in camp, troop, or company of soldiers, nor shall be captain, master, governor, or bear any office of any ship, castle, or fortress, of the king; and every person offending herein shall forfeit £100. one moiety to the king, and the other to him that will sue by action of debt, &c. in any court of record. By s. 9. no popish recusant convict, nor having any wife being a popish recusant convict, shall exercise any public office in the commonwealth, except such husband, and his children above the age of 9 years abiding with him, and his servants in household, shall once every month, not having reasonable excuse, repair to some church or chapel for divine service; and the said husband, and such his children and servants as are of meet age, receive the sacrament at such times as are limited by law, and bring up his said children in the true religion. By s. 11. every popish recusant convict shall be disabled as a person excommunicated, until he shall conform himself, and come to church, and receive the sacrament, and take the oath

s. 8.

Recusants convicted disabled to follow certain professions, &c.

Penalty for exercising such functions.

s. 9.

Popish recusants convicted shall not hold public offices.

s. 11.

And shall be as excommunicate persons.

in

s. 12.

Proviso.

s. 13.

Penalties of popish marriages.

s. 14.

Penalty of popish baptism.

s. 15.

Penalty for popish burials.

in the 3 Jac. 1. c. 4. (which is superseded by the 1 W. & M. st. 1. c. 18. *post* 414.) and every person sued by such person disabled, may plead the same in disabling of such plaintiff. Provided (s. 12.) that it shall be lawful for any such person disabled, to sue any action concerning such of his lands which are not to be seized into the king's hands for his recusancy. By s. 13. every man being a popish recusant convict, and who shall be married otherwise than in some open church or chapel, and according to the orders of the church of England, by a minister lawfully authorized, shall be disabled to have any estate of freehold in the lands, &c. of his wife as tenant by the curtesy; and every woman being a popish recusant convict, and who shall be married in other form than as aforesaid, shall be disabled not only to claim any dower, or any jointure, of the lands, &c. of her husband, but also her widow's estate and frank-bank, in any customary lands, and likewise to have any part of the goods of her husband, by virtue of any custom. And if any man shall be married with any woman contrary to this act, which woman shall have no lands, &c. whereof he may be tenant by the curtesy, such man shall forfeit £100. the one half to the king, and the other to such as shall sue by action of debt, &c. in any court of record. By s. 14. every popish recusant which shall have any child born, shall, within one month after the birth, cause the child to be baptized by a lawful minister, according to the laws of this realm, in the open church of the parish where the child shall be born, or in some other church near adjoining, or chapel where baptism is usually administered; or if by infirmity of the child, it cannot be brought to such place, the same shall, within the time aforesaid, be baptized by the minister of any of the said places, upon pain that the father, if he be living, one month after the birth of such child, or if he be dead within the said month, then the mother of such child, shall forfeit £100. one third part to the king, one other third to the informer, and the other third to the poor of the parish, to be recovered by action of debt, &c. in any court of record. And by s. 15. if any popish recusant, not being excommunicate, shall be buried in any place other than in the church

or

or church-yard, or not according to the ecclesiastical laws of this realm, the executors or administrators of such person, knowing the same, or the party that causeth him to be so buried, shall forfeit £20. one third part to the king, one third to the informer, and the other third to the poor of the parish where such person died, to be recovered by action of debt, &c. in any court of record. Bys. 22. recusants convict shall be disabled to be executor or administrator, nor shall have the charge of any child as guardian in socage, or guardian in nurture, of any lands, &c. freehold or copyhold. And by s. 23. the next of kin to such children to whom the lands, &c. cannot descend, who shall usually resort to church, and receive the sacrament thrice in the year next before, shall have the custody of the child, and of his lands, &c. as a guardian in socage, and of the lands, &c. holden by copy, so long as the custom of the manor shall permit. By s. 27. all such armour, gunpowder, and munition, as any popish recusant convict shall have, shall be taken from such recusant, by warrant of 4 justices of peace at their quarter sessions, other than such necessary weapons as shall be thought fit by the justices for the defence of the person of such recusant, or of his house; and the said armour and munition shall be kept at the costs of such recusants, as the justices shall appoint. And by s. 28. if any such recusant, or any other person, which shall have any armour, &c. to the use of any recusant, shall refuse to declare to the justices what armour they have, or to hinder the delivery thereof, such persons shall forfeit their said armour, &c. and shall also be imprisoned, by warrant of any justices of peace, 3 months. And by s. 29. notwithstanding the taking away of such armour and munition, the said recusant shall be charged with the maintaining of the same, and with the providing of horse, and other armour and munition, in such sort as other his majesty's subjects; and said armour, &c. at the charge of such popish recusant, shall be shewed at every muster within the county. By. s. 30. this act shall not abridge the authority of the ecclesiastical censure.*

Maintaining

* The clauses of this statute which disable popish recusants convict, from presenting

s. 22.

A recusant shall not be executor or administrator.

s. 23.

Who shall have the wardship.

s. 27.

Such recusants shall not have arms, &c.

s. 28.

Forfeiture for not delivering arms, &c.

s. 29.

Yet such recusants shall provide arms, &c.

s. 30.

Proviso.

*Penalty for
maintaining
recusants.*

3 Jac. 1. c. 4.
s. 32. Eng.

s. 33.

*Penalty for
keeping recu-
sants as servants
&c.*

s. 34.

Proviso.

*The statutes
against recusan-
cy shall not ex-
tend to protest-
ant dissenters,
who shall take
the oaths, &c.*

1 W. & M. st. 1.
c. 18. Eng.

Maintaining others who shall not repair to church, may be considered as a species of accessorial recusancy, which is also the object of the 3 Jac. 1. c. 4. Eng. By s. 32. every person which shall willingly keep or harbour in his house any servant, sojourner, or stranger, who shall not repair to some church, or usual place of common prayer, but shall forbear the same one month, shall forfeit for every month £10. And by s. 33. every person which shall keep in his service or livery, any person which shall not repair to some church, or usual place of common prayer, but shall forbear the same one month, shall forfeit for every month £10. But by s. 34. this act shall not extend to any person maintaining or harbouring his father or mother, wanting habitation, or sufficient maintenance, or the ward of such person, or any person that shall be committed by authority to the custody of any by whom they shall be kept.

The Toleration Act (1 W. & M. st. 1. c. 18. Eng.) which has been in part stated (*ante* p. 388.) recites or refers to the statutes 1 Eliz. c. 2. s. 14. 23 Eliz. c. 1. 29 Eliz. c. 6. 3 Jac. 1. c. 4. and 3 Jac. 1. c. 5. and enacts (s. 1.) that they, nor any other statute made against papists or popish recusants, (*except the 25 Car. 2. c. 2. and 30 Car. 2. st. 2.) shall extend to any persons dissenting from the church of England, that shall take the oaths (of allegiance and supremacy) mentioned in the 1 W. & M. st. 1. c. 1. Eng. and shall make and subscribe the declaration (against popery) mentioned in the 30 Car. 2. st. 2. Eng.; which oaths and declaration the justices of peace at the general sessions of the peace, to be held for the county or place where such person shall live, are to administer to such persons as shall offer to take and subscribe the same, and thereof to keep a register: and no person shall give to any officer belonging to such court above 6*d.* for his entry of taking said oaths,

presenting to benefices, and which transfer such right of presentation to the Universities of Oxford and Cambridge, have been already referred to Book 2. p. 432.

* These statutes have been in part stated (Vol. 1.) and will again fall under consideration, with other statutes concerning constructive recusancy.

oaths, &c. nor above the further sum of 6*d.* for any certificate of the same, to be made out by said officer.*

But it is provided (s. 16.) that all laws made for the frequenting of divine service on the Lord's day, shall be executed against all persons that offend against said laws, except such persons come to some assembly of religious worship allowed by this act. And the 31 Geo. 3.

s. 16.

Provided they attend religious worship in some assembly allowed by law.

31 Geo. 3. c. 32.

s. 3. Eng.

c. 32. s. 3. Eng. recites the 1 Eliz. c. 2. 23 Eliz. c. 1.

29 Eliz. c. 6. 35 Eliz. c. 2. 1 Jac. 1. c. 4. 3 Jac. 1. c. 4.

Catholics who shall take the oath hereby appointed, exempted from the penalties of recusancy.

*vide V. 1. p. 298

3 Jac. 1. c. 5. and 7 Jac. 1. c. 6. and provides, that no

person professing the Roman catholic religion, who shall

take and subscribe the oath* herein appointed to be

taken, shall be prosecuted upon the said statutes, or any

other law, by indictment, information, action of debt,

or otherwise, or shall be prosecuted in any ecclesiastical

court for not resorting to his parish church or chapel, or

other usual place of common prayer, to hear divine ser-

vice, and join in public worship according to the forms

and rites of the church of England, as by law established,

or for keeping any servant or other person being a pa-

pist, &c. who shall not so repair to his parish church,

&c. And this act provides (s. 9.) that all laws made for

s. 9.

the frequenting of divine service on the Lord's day, shall

be executed against all persons who shall offend against

But such catholics must attend some place of religious worship allowed by this act.

said acts, unless such persons shall come to some assem-

bly of religious worship permitted by this act, or by the

1 W. & M. st. 1. c. 18. *supra.*

In Ireland the 2 Eliz. c. 2. Ir. has followed the 1 Eliz.

*Recusants in Ireland liable only to ecclesiastical censures, and to a penalty of 12*d.**

2 Eliz. c. 2.

s. 3. Ir.

c. 2. Eng. in its several clauses, and contains amongst

the rest, a provision similar to s. 14. of the 1 Eliz. c. 2.

(*ante* p. 396.) by which recusants are made liable to ec-

clesiastical censures, and to a penalty of 12*d.* for not

resorting to church upon Sundays and holidays. And

this clause (s. 3.) of the 2 Eliz. c. 2. Ir. is recited by the

6 Geo. 1. c. 5. Ir. which provides, that it shall not ex-

6 Geo. 1. c. 5. s. 1. Ir.

tend to any persons being protestants dissenting from

Protestant dissenters taking the oaths, &c. exempt from such penalties.

the church of Ireland, that shall, in manner herein pre-

scribed, take the several oaths of allegiance, supremacy,

and

* *Vide* s. 13. (*ante* p. 389.) which prescribes the declaration of fidelity for such as scruple the taking an oath.

and abjuration, and make and subscribe the declaration against popery, which are set forth in this statute :* which oaths and declaration the justices of peace at the general or quarter sessions of the peace, to be held where such person shall live, are to administer to such persons as shall offer themselves to take the same, and thereof to keep a register; and no such person shall pay to any officer above 6*d.* and that not more than once, for his entry of taking the said oaths, &c. nor above 6*d.* for any certificate of the same; which certificate such officer is required to make and sign upon request of such person.†

s. 12.

Provided also they resort to some congregation allowed by this act.

33 Geo. 3. c. 21. s. 11 & 14. Ir.

Catholics who take the oaths, &c. hereby appointed, not liable to penalty for not attending church on the sabbath.

And this act (s. 12.) provides, that all laws made for the frequenting of divine service on the Lord's day, shall be executed against all persons that offend against the said laws, except such persons resort to some congregation allowed by this act. And with respect to Roman catholics the 33 Geo. 3. c. 21. s. 11. Ir. provides, that no papist, &c. shall be liable to any penalty for not attending divine service on the sabbath day, in his parish church. But by s. 14. no papist, &c. shall take any benefit by this act, unless he shall have first taken and subscribed the oath and declaration in this act contained, and also the oath appointed by the 13 & 14 Geo. 3. c. 35. in manner hereby directed.

§ 6.

Forfeiture for saying or hearing mass.

23 Eliz. c. 1. s. 4. Eng.

VI. *Saying or hearing mass* is another offence against God and religion, in respect to which the 23 Eliz. c. 1. Eng. (several clauses of which have been already stated *ante* p. 397. 8.) provides (s. 4.) that every person which shall say

* The oaths of allegiance and supremacy contained in this statute, correspond with those of the 1 W. & M. st. 1. c. 8. Eng. and 1 Geo. 1. st. 2. c. 13. Eng. (*vide* vol. 1. p. 289. 290.) And the declaration against popery is the same as that contained in the 30 Car. 2. st. 2. Eng. (*vide* vol. 1. p. 140.) omitting the word "English" in the 17th line, and substituting the word "believing" for "thinking" in the 23rd line of page 140, vol. 1. But the oath of abjuration in this statute, is taken from that of the 1 Geo. 1. st. 2. c. 13. Eng. which (upon the death of the pretender) was altered by the 6 Geo. 3. c. 53. Eng. and which alteration is adopted in Ireland by the 21 & 23 Geo. 3. c. 48. Ir. *vide* vol. 1. p. 289. 290.

† By s. 17. a form of declaration is prescribed for quakers, comprehending the substance of these oaths and declaration. *vide* p. 395.

say or sing mass, being thereof convicted, shall forfeit 200 marks, and be committed to prison in the next gaol, for one year, and till payment. And every person which shall willingly hear mass, shall forfeit 100 marks, and suffer imprisonment for a year. And by the 27 Eliz. c. 2. s. 4. Eng. every person who shall wittingly and willingly receive, relieve, comfort, aid, or maintain any jesuit, seminary priest, or other priest, deacon, or religious or ecclesiastical person, being born within her highness's dominions, and ordained or professed by any authority from the see of Rome, being at liberty, shall be adjudged a felon without benefit of clergy. By s. 8. every offence against this act may be inquired of, &c. as well in the king's bench in the county where the court shall be, as in any other county, or any other her highness's dominions where the offence shall be committed, or the offender taken. By s. 10. this act shall not extend to any such jesuit, seminary priest, or other ecclesiastical person, as shall, within 3 days after he shall come into this realm, submit himself to some bishop, or to some justice of peace within the county where he shall arrive, and take the oath of supremacy, and under his hand acknowledge and continue his due obedience to her highness's laws in causes of religion. By s. 11. if any peer be indicted of any offence made [*treason,] felony, [or *præmunire*] by this act, he shall have his trial by his peers. By s. 13. every subject of this realm which shall know that any such jesuit, &c. shall be within this realm contrary to this act, and shall not discover the same to some justice of peace, or other higher officer, within 12 days, but willingly conceal his knowledge therein, such offender shall make fine, and be imprisoned at the queen's pleasure; And if such justice of peace or other officer, to whom such matter shall be discovered, do not, within 28 days, give information thereof to some of the privy council, he shall forfeit 200 marks. And by s. 14. such of the privy council to whom such information shall be made, shall thereupon deliver a note to the party by whom

27 Eliz. c. 2.
s. 4. Eng.

Relieving a jesuit, &c. a felony.

Offences where inquirable.

s. 10.

Proviso for jesuits, &c. conforming.

s. 11.

Proviso for peers.

s. 13.

Penalty for not discovering of jesuits, &c.

s. 14.

Certificate of privy council.

* The clauses of this statute which relate to treason and *præmunire*, will be stated in the chapters concerning these offences.

- whom he shall receive such information, testifying that such information was made to him. By s. 15. all oaths and submissions made by force of this act, shall be certified into the chancery, by such parties before whom the same shall be made, within 3 months after such submission; upon pain to forfeit £100. to the queen, her heirs and successors. By s. 16. if any person so submitting do, within 10 years after such submission, come within 10 miles of such place where her majesty shall be, without special license from her majesty under her hand, such person shall take no benefit of his submission. And by the 35 Eliz. c. 2. s. 11. Eng. if any person who shall be suspected to be a jesuit seminary or massing priest, being examined by any person having lawful authority in that behalf to examine him, shall refuse to answer, directly and truly, whether he be a jesuit, &c. he shall be committed to prison by such as shall examine him, and there continue until he shall make direct and true answer to the said questions. And by the 3 Jac. 1. c. 5. s. 1. Eng. such person as shall first discover to any justice of peace, [any recusant or other person which shall entertain or relieve any jesuit, seminary or popish priest, or] shall discover any mass to have been said, and the persons that were present at such mass, and the priest that said the same, or any of them, within 3 days after the offence committed, and by reason whereof any of said offenders shall be convicted or attainted, shall be freed from the penalty of any law for such offence, and shall have the 3rd part of the forfeiture, so as the total exceed not £150.; and if it do exceed £150. he shall have the sum of £50. for every such discovery; and after conviction of the offender, he shall have a certificate from the judges or justices of the peace before whom the conviction shall happen, to be directed to the sheriff or other officer who shall seize the goods or levy the forfeiture, commanding him to pay the same out of said forfeitures. The 11 & 12 W. 3. c. 4. s. 1. Eng. further provides, that every person who shall apprehend any popish bishop, priest, or jesuit, and prosecute him until he be convicted of saying mass, or of exercising any other
- s. 15.
- Submissions certified to chancery.*
- s. 16.
- None submitting to come within 10 miles of the queen.*
- 35 Eliz. c. 2.
s. 11. Eng.
- A jesuit, &c. refusing to answer shall be imprisoned.*
- 3 Jac. 1. c. 5.
s. 1. Eng.
- Reward for discovery of priest saying mass, or persons present.*
- 11 & 12 W. 3.
c. 4. s. 1. Eng.
- Reward for apprehending popish bishop, &c. saying mass.*

other part of such function, within these realms, shall receive from the sheriff of the county where such conviction shall be, (without paying any fee for the same) for every such offender so convicted, the sum of £100. within 4 months after such conviction, and demand thereof made, by tendering a certificate under the hand of the judge before whom such conviction shall be, certifying the conviction of such bishop, &c. and that such bishop, &c. was taken by the person claiming the reward. And in case any dispute shall arise between the persons apprehending any such popish bishop, &c. then the judge or justices shall by their certificate appoint the reward to be paid amongst the persons claiming the same, in such proportion as to the said judge or justices shall seem just: And if any sheriff shall die or be removed, before 4 months after such conviction, and demand of such reward, then the succeeding sheriff shall pay the same within 2 months after demand, and certificate brought as aforesaid; and if default of payment shall be made by any sheriff, he shall forfeit to the person to whom such money is due, £200. to be recovered by him, his executors or administrators, in any court of record at Westminster, by action of debt, &c. with full costs of suit. And by s. 2. all sheriffs, their successors, executors, &c. upon producing such certificates, or a duplicate thereof, shall be paid out of the treasury. And it is further enacted by s. 3. that if any popish bishop, priest, or jesuit, shall say mass, or exercise any other part of the function of a popish bishop, &c. within those realms or dominions, such person shall be adjudged to perpetual imprisonment in such place within this kingdom, as the king by advice of his privy council shall appoint. Provided (s. 5.) that this act shall not extend to any popish priest for saying mass, or officiating as a priest within the dwelling house of any foreign minister residing here, so as such priest be not a natural-born subject, nor naturalized within the king's dominions, and so as the name of such priest, and the place of his birth, and the foreign minister to whom he shall belong, be registered in the office of the principal secretary of state

Penalty for default of sheriff in paying the reward.

s. 2.

Sheriff's how repaid.

s. 3.

Perpetual imprisonment for saying mass.

s. 5.

Proviso as to mass in houses of foreign ministers.

18 Geo. 3. c. 60.
s. 1. & 5. Eng.

The penalties
of the 11 & 12
W. 3. c. 4. supra
conditionally re-
pealed.

state. But the 18 Geo. 3. c. 60. s. 1. Eng. enacts (*inter alia*) that so much of the 11 & 12 W. 3. c. 4. *supra*, as relates to the apprehending or prosecuting of popish bishops, priests, or jesuits, shall be repealed: But it is provided (s. 5.) that nothing in this act shall extend to any popish bishop, &c. who shall not have taken, before he shall have been apprehended, or any prosecution commenced against him, the following oath: “ I *A. B.* do sincerely promise and swear, that I will be
“ faithful and bear true allegiance to his majesty king
“ George the third, and him will defend to the utmost
“ of my power, against all conspiracies and attempts
“ whatever, that shall be made against his person, crown
“ or dignity; and I will do my utmost endeavour to dis-
“ close and make known to his majesty, his heirs and
“ successors, all treasons and traitorous conspiracies
“ which may be formed against him or them; and I do
“ faithfully promise to maintain, support, and defend,
“ to the utmost of my power, the succession of the
“ crown in his majesty’s family, against any person or
“ persons whatsoever; hereby utterly renouncing and
“ abjuring any obedience or allegiance unto the person
“ taking upon himself the stile and title of Prince of
“ Wales, in the life time of his father, and who, since
“ his death, is said to have assumed the stile and title of
“ king of Great Britain, by the name of Charles the
“ third, and to any other person claiming or pretend-
“ ing a right to the crown of these realms: And I do
“ swear, that I do reject and detest, as an unchristian
“ and impious position, that it is lawful to murder or
“ destroy any person or persons whatsoever, for or un-
“ der pretence of their being heretics; and also that
“ unchristian and impious principle, that no faith is to
“ be kept with heretics; I further declare, that it is
“ no article of my faith, and that I do renounce, reject,
“ and abjure the opinion, that princes excommunicated
“ by the pope and council, or by any authority of the
“ see of Rome, or by any authority whatsoever, may be
“ deposed or murdered by their subjects, or any person
“ whatsoever: and I do declare, that I do not believe
“ that

“ that the pope of Rome, or any other foreign prince,
 “ prelate, state, or potentate, hath, or ought to have,
 “ any temporal or civil jurisdiction, power, superiority,
 “ or pre-eminence, directly or indirectly, within this
 “ realm. And I do solemnly, in the presence of God,
 “ profess, testify, and declare, that I do make this de-
 “ claration, and every part thereof, in the plain and
 “ ordinary sense of the words of this oath, without any
 “ evasion, equivocation, or mental reservation whatever,
 “ and without any dispensation already granted by the
 “ pope, or any authority of the see of Rome, or any
 “ person whatever; and without thinking that I am
 “ or can be acquitted before God or man, or absolved of
 “ this declaration, or any part thereof, although the
 “ pope, or any other persons or authority whatsoever,
 “ shall dispense with or annul the same, or declare that
 “ it was null or void.” Which oath is to be administered

and registered as already stated (vol. 1. p. 490.) And

the 31 Geo. 3. c. 32. s. 4. Eng. (which recites the 23 Eliz.

c. 1. 27 Eliz. c. 2. 35 Eliz. c. 2. 1 Jac. 1. c. 4. 3 Jac. 1.

c. 5. 3 Car. 1. c. 2. and 25 Car. 2. c. 2.) further provides,

that no person who shall take the oath herein appointed in
 the manner hereby required (*vide* vol. 1. p. 297—8.) shall

be prosecuted, &c. in any civil or ecclesiastical court

for being a papist, or reputed papist, or for professing

or being educated in the popish religion, or for hearing

or saying mass, or for being a priest or deacon, or en-

tering or belonging to any ecclesiastical order or com-

munity of the church of Rome, or for being present at,

or performing or observing any rite or ceremony of the

popish religion, or maintaining or assisting others there-

in. Provided (s. 5.) that no congregation or assembly for

religious worship shall be permitted by this act, until the

place of such meeting be certified to the justices of the

peace, at the general or quarter sessions of the peace

for the county, &c. in which such meeting shall be

held, and until the place of such meeting shall be

recorded at such sessions; (the clerk of the peace

whereof shall record the same, and give a certificate

thereof to such person as shall demand the same, for

which 6*d.* shall be the fee;) and no person in holy

orders

31 Geo. 3. c. 32.
s. 4. Eng.

No person who
shall take the
oath hereby ap-
pointed, to be
prosecuted for
being present at,
or performing
any ceremony
of the popish re-
ligion.

s. 5.

But their places
of worship to be
certified, &c.

*And their priests
also recorded.*

orders or pretended holy orders, of any rank, shall perform any ecclesiastical function, or officiate in such place of meeting, until his name, and description as a priest or minister, shall have been recorded at the quarter or general session of the peace for the county, &c. in which such place of meeting shall be, by the clerk of the peace; who is required to record such name and description upon demand, and upon payment of 6d; and to give a certificate thereof to such person, for which 2s. shall be the fee: And no priest, &c. who shall officiate in any place of meeting not so recorded, shall be deemed to be within the meaning of this act. And

s. 6.

*No assembly for
worship to be
with doors lock-
ed, &c.*

by s. 6. if any assembly of persons professing the Roman catholic religion shall be had in any place for religious worship, with the doors locked, barred, or bolted, every person who shall be present at such meeting, shall not receive any benefit from this law. By s. 8. every priest

s. 8.

*Priests exempt-
ed from serving
on juries, &c.*

or other person in holy orders, or pretended holy orders, being a minister, teacher, or preacher of any congregation, of persons professing the Roman catholic religion, who shall take and subscribe the oath of allegiance, abjuration, and declaration, in manner herein prescribed, shall be exempted from serving upon any jury, or from being chosen or appointed church-warden, overseer of the poor, or other office, in any hundred, city, town, parish, &c. And by s. 10. if any person shall willingly

s. 10.

*Penalty for dis-
turbance their
worship.*

and of purpose, maliciously or contemptuously, come into any place of congregation or assembly of religious worship, permitted by this act, and disturb the same, or misuse any priest, minister, preacher, or teacher therein, such person, upon proof thereof before any justice of peace, by 2 witnesses, shall find 2 sureties of the peace to be bound by recognizance in the penal sum of £50; and in default of such sureties shall be committed to prison, till the next general or quarter-sessions; and upon conviction of said offence at said session, shall suffer the penalty of £20. to the use of the king. Provided (s. 11.) that no benefit in this act shall

s. 11.

*Restrictions on
Roman catholic
ecclesiastics,*

extend to any Roman catholic ecclesiastic, who shall officiate in any place of congregation or assembly for religious worship

worship, permitted by this act, with a steeple and bell, or at any funeral in any church or church-yard, or who shall exercise any of the rites of his religion, or wear the habit of his order, save within some place of congregation allowed by this act, or in a private house where there shall not be more than 5 persons assembled besides those of the household, or who shall not previously to his so officiating or exercising his functions as aforesaid, have taken and subscribed the oath of allegiance, abjuration, and declaration herein appointed. Provided (s. 12.) that nothing herein shall exempt any person professing the Roman catholic religion from paying tithes or other parochial duties, or other duties to the church or minister, or from any prosecution in any ecclesiastical court, or elsewhere, for the same; or to repeal any part of the marriage act 26 Geo. 2. c. 33. or to give any benefit to any person who shall by preaching, teaching, or writing, deny or gainsay the oath of allegiance, &c. herein appointed, or the declarations or doctrines therein contained; or to repeal any law now in force concerning the right, or succession to, or limitation of the crown. The 43 Geo. 3. c. 30. E. & W. provides, that the declaration and oath contained in the 31 Geo. 3. c. 32. *supra*, shall, as to all persons who have taken and subscribed, or shall take or subscribe the same, in the manner therein mentioned, give the same benefits as the oath prescribed by the 18 Geo. 3. c. 60. *supra*.

s. 12

*Proviso as to tithes &c.**Marriage act.**Settlement of the crown.*

43 Geo. 3. c. 30. E. & W.

Taking the oath contained in 31 Geo. 3. c. 32. shall give the benefit of 18 Geo. 3. c. 60.

By the 2 Ann. c. 7. Ir. as explained and amended by the 4 Ann. c. 2. Ir. every popish priest, or person exercising the function of popish priests, shall return his name and place of abode to the clerk of the peace of the county, or county of a city or town, in this kingdom, where he shall dwell or reside, together with his age, the parish of which he pretends to be popish priest, the time and place of his first receiving popish orders, and from whom he received the same; and shall there enter into a recognizance with 2 sureties, each in the sum of £50. that such popish priest shall be of peaceable behaviour, and not remove out of such county where his place of abode lies, into any other part of this kingdom;

Popish priests to make returns of their names and descriptions, &c. to clerks of the peace,

2 Ann. c. 7. Ir.

4 Ann. c. 2. Ir.

And to enter into a recognizance, &c.

•Post ch. 5.

Clerks of the peace to transmit returns to the clerks of the privy council.

Penalty of harbouring, &c. any priest not so registered, &c.

Penalty of magistrates neglecting their duty.

8 Ann. c. 3.
s. 19. Ir.

Popish priest keeping popish curate, both prosecuted as popish regulars.

21 & 22 Geo. 3.
c. 24. s. 5. Ir.

kingdom; and if any priest shall be found in this kingdom other than such as have so registered their names, he shall be liable to such penalties, forfeitures and punishments, as by the 9 W. 3. c. 1. Ir.* are imposed on popish archbishops, bishops, vicars-general, deans, jesuits, friars, or other papists exercising any ecclesiastical jurisdiction, who shall come into this kingdom contrary to said act. And the clerks of the peace are (by the 2 Ann. c. 7.) required to transmit, within 20 days after every quarter-sessions, every such return to the clerk of the council in this kingdom, upon pain of forfeiting £10. to the king; to be recovered by bill, plaint, or information, in any court of record; which transmitting is to be proved by a receipt in writing under the hand of the clerk of the council, who is required (without fee) to give such receipt, on pain of £20. to be recovered by bill, &c. in any court of record: and every return so transmitted shall be kept by the clerk of the council, to be viewed without fee. And any person who shall knowingly harbour, relieve, conceal, or entertain any such clergyman of the popish religion, or other person exercising the function of a popish priest, and not registered as aforesaid, shall be liable to such penalties and forfeitures as by the 9 W. 3. c. 1. Ir.* are imposed on the harbourers, relievers, and concealers of any popish archbishops, &c.: And all justices of peace, sheriffs, constables, and other subjects, are required to use their diligence in apprehending all popish priests, &c. not registered as aforesaid. And if any mayor, justice of peace, or other officer, knowingly and voluntarily shall neglect his duty, he shall forfeit £50. to be recovered by action of debt, &c.; one moiety to the crown, and the other to the informer or other person that shall sue for the same. And by the 8 Ann. c. 3. s. 19. Ir. no popish parish priest shall keep any popish curate, assistant or coadjutor, or he shall lose the benefit of having been registered, and shall incur the penalties of a popish regular; and every such popish curate, &c. shall be deemed as a popish regular, and shall be prosecuted and proceeded against accordingly. But by the 21 & 22 Geo. 3. c. 24 s. 5. Ir.

s. 5. Ir. no popish ecclesiastic who shall have taken the oath of allegiance and declaration prescribed by the 13 & 14 Geo. 3. c. 35. Ir. (*Vide* vol. 1. p. 300.) in the manner hereinafter specified, and who shall register his christian and surname, place of abode, age, and parish, (if he have a parish) and the time and place of his receiving his first and every other popish orders, and from whom he received them, with the register of the diocess where his place of abode is, (for which registry 1s. shall be paid to the register) shall be subject to any of the penalties or disabilities mentioned in the 9 W. 3. c. 1. 2 Ann. c. 6 & 7. 2 Ann. c. 3. 4 Ann. c. 2. or 8 Ann. c. 3. Provided (s. 6.) that no benefits in this act shall extend to any regular of the popish clergy, who shall not be in this kingdom at the time of passing this act, or to any regular then in this kingdom, who shall not have taken and subscribed the said oath, and registered his names and additions, in manner herein directed, 6 months after the passing of this act, nor to any popish ecclesiastic who shall not upon change of his place of abode, or of popish orders, or removal from the parish which he had so returned, and as often as it shall so happen, make a return of such change or removal within 6 months after it shall happen, to the then register of the diocess where he had originally registered. And by s. 7. the registers of the different dioceses shall enter the names and additions as aforesaid of such popish ecclesiastics, in a separate roll, to be kept in their offices; and on every 1st of January shall transmit copies of such returns made in the preceding year, to the clerk of the privy council, upon pain of forfeiting to the king £100. to be recovered by bill, plaint, or information, in any court of record. By s. 8 & 10. no benefits in this act shall extend to any popish ecclesiastic who shall officiate in any church or chapel with a steeple or bell, or at any funeral in any church or church-yard, or who shall exercise any of the rites or ceremonies of the popish religion, or wear the habits of his order, save within their usual places of worship, or in private houses, or who shall use any symbol or mark of ecclesiastical dignity or authority, or assume

No popish ecclesiastic taking the oath in 13 & 14 Geo. 3. c. 35. and registering his name, &c. with the register of the diocess, subject to penalties, &c.

s. 6.

Proviso as to popish regulars.

s. 7.

Duty of registers.

s. 8. & 10.

Provisoes as to steeples, bells, funerals, ecclesiastical habits or titles, &c.

Proviso as to persons perverting others or being perverted to popery.

assume any ecclesiastical rank or title ; nor to any popish ecclesiastic who shall procure, incite, or persuade any protestant to become a papist ; but all pains and penalties of the laws now in being, shall remain in force against popish ecclesiastics so offending. And this act (s. 9.) as already stated (vol. 1. p. 502.) excepts also protestants perverted to popery. But it seems to be questionable how far these several provisoes are not done away by the 33 Geo. 3. c. 21. s. 1. *Ir. vide* vol. 1. p. 503.

§. 7.

Penalty for maintaining non-conforming school-masters.

23 Eliz. c. 1. s. 6. Eng.

s. 7.

Penalty of school-master.

1 Jac. 1. c. 4. s. 9. Eng.

Forfeiture for being or keeping a school-master contrary to this act.

11 & 12 W. 3. c. 4. s. 3. Eng.

Penalty for papist keeping school, &c.

VII. In respect to the offence of maintaining non-conforming teachers of schools ; the 23 Eliz. c. 1. s. 6. Eng. provides, that any person, &c. who shall keep or maintain any school-master who shall not repair to church according to the directions of the 1 Eliz. c. 2. and of this statute, or be allowed by the bishop or ordinary of the diocess, (who shall not take any thing for the said allowance) shall forfeit for every month £10. And by s. 7. such school-master presuming to teach contrary to this act, and being thereof convicted, shall be disabled to be a teacher of youth, and shall suffer imprisonment for one year.* And by the 1 Jac. 1. c. 4. s. 9. Eng. no person shall keep any school, or be a school-master, out of the universities or colleges of this realm, except it be in some public or free grammar school, or in the house of a nobleman or gentleman not a recusant, or where such school-master shall be specially licensed thereto by the archbishop, bishop, or guardian of the spiritualties of the diocess ; on pain that as well the school-master, as also the party that shall retain or maintain such school-master, shall forfeit each of them for every day so wittingly offending 40s. one half to the king, the other to him that will sue in any court of record at Westminster, by action of debt, &c. And by the 11 & 12 W. 3. c. 4. s. 3. Eng. if any papist, &c. shall keep school, or take upon himself the education, or government, or boarding of youth, in any place within the realm or dominions, such person shall, on conviction, be

* *Vide* s. 8. to 15. *ante* page 397—8.

be adjudged to perpetual imprisonment in such place within the kingdom, as the king by advice of his privy council shall appoint: But this clause of the 11 & 12 W. 3. c. 4. is repealed by the 18 Geo. 3. c. 60. Eng. as to such popish school-masters as shall take and subscribe the oath hereby appointed (*ante* page 420.) before they shall have been apprehended, or any prosecution commenced against them. And by the 31 Geo. 3. c. 32. s. 13. Eng. no person professing the Roman catholic religion, who shall take and subscribe the oath of allegiance, abjuration, and declaration, herein appointed (*vide* vol 1. p. 298.) shall be prosecuted for teaching and instructing youth as a tutor or school-master. Provided (s. 14.) that no person professing the Roman catholic religion shall obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, or shall keep a school in either of the universities of Oxford or Cambridge: And provided (s. 15.) that no school-master professing the Roman catholic religion shall receive into his school, for education, the child of any protestant father. And by s. 16. no person professing the Roman catholic religion, shall be permitted to keep a school for the education of youth, until his or her name and description as a school-master or school-mistress shall have been recorded at the general or quarter-session of the peace for the place where such school shall be situated, by the clerk of the peace of said court, (who is to record the name and description, and give a certificate thereof, upon demand). And provided (s. 17.) that nothing in this act shall make it lawful to found, endow, or establish any religious order or society of persons bound by monastic or religious vows; or to found, &c. any school, academy, or college, by persons professing the Roman catholic religion, within these realms or dominions; and that all uses, trusts, and dispositions, whether of real or personal property, which before the 24th of June 1791, were deemed superstitious or unlawful, shall continue to be so deemed.

18 Geo. 3.c.60.
s. 1. Eng.

*The clause of the
11 & 12 W. 3.
supra condition-
ally repealed.*

31 Geo. 3.c.32.
s. 13. Eng.

*Roman catholics
who take the
oath, &c. here-
by appointed,
may teach youth.*

s. 14.

*Proviso as to col-
leges, &c.*

s. 15.

*Proviso as to
children of pro-
testants.*

s. 16.

*Names of such
school-masters
to be recorded.*

s. 17.

*No religious or-
ders, &c. to be
founded by Ro-
man catholics.*

In

Penalty of papists instructing youth, &c.

8 Ann. c. 3. s. 16. Ir.

School-master to take the oaths of allegiance, &c.

Penalty for employing persons not qualified as tutors, &c.

21 & 22 Geo. 3. c. 62. s. 1 & 2. Ir.

The penalties of the 8 Ann. c. 3. supra, conditionally repealed.

In Ireland the 8 Ann. c. 3. s. 16. Ir. provides, that whatsoever person of the popish religion shall publicly teach school, or shall instruct youth in learning in any private house, or shall be entertained to instruct youth as usher, under-master or assistant, by any protestant school-master, shall be taken to be a popish regular clergyman, and be prosecuted as such, and incur such pains, &c. as any popish regular convict is liable unto* by the laws of this realm. And no person shall be qualified to teach or keep school publicly, or instruct youth in learning, in any private house, or as usher or assistant to any protestant school-master, who shall not first, or at the next general assizes, or general quarter-sessions of the peace, to be held for the county where such person shall inhabit or reside, after such person is so entertained, take the oath of allegiance, and make and subscribe the declaration, and take and subscribe the oath of abjuration, as in the 2 Ann. c. 6. Ir. is directed and expressed: and if any person shall offend herein, he shall forfeit £10. for every such offence: and if any person shall entertain any one, not qualified as aforesaid, as tutor, under-master, usher, or assistant, he shall forfeit £10. for such offence: the one moiety to the informer, the other moiety (the expense of the prosecution being first deducted) to the use of the poor of the parish where such offence shall be committed, to be recovered by civil bill. But the 21 & 22 Geo. 3. c. 62. s. 1. Ir. enacts, that so much of this act (8 Ann. c. 3.) as subjects persons of the popish religion who shall publicly teach school, or who shall instruct youth in learning in any private popish house, within this realm, to the penalties of popish regulars convict, shall be repealed: But provides (s. 2.) that nothing in this act shall extend to any popish school-master, who shall not have taken and subscribed the oath of allegiance and declaration prescribed by the 13 & 14 Geo. 3. c. 35. Ir. in some of the Four Courts in Dublin, or at the quarter-sessions of the peace for the county of Dublin, or before any of the going judges of assize, in open

* This clause refers to the 9 W. 3. c. 1. Ir. and 2 Ann. c. 3. Ir. which will be stated in another place.

open court. And by s. 3. nothing in this act shall extend to any popish school-master, who shall receive into his school any person of the protestant religion, or to any person of the popish religion who shall be entertained to instruct youth in learning, as usher, under-master, or assistant, by any protestant schoolmaster. s. 3. *Proviso as to protestant scholars and school-masters.*

And provided also (s. 4.) that nothing herein shall be construed to allow the erection or endowment of any popish university or college, or endowed school; or to authorize any papist, &c. to teach or keep school, who shall not have first obtained the license of the ordinary for the purpose; which license the ordinary is hereby empowered to grant and recall from time to time as he shall think proper: But the 32 Geo. 3. c. 21. s. 15. Ir. provides, that it shall not be necessary that the license of the ordinary shall be obtained, in order to authorize any person of the Roman catholic religion to keep or teach school; provided that such person shall, in other respects, perform the requisites required by the 21 & 22 Geo. 3. c. 62. *supra*. s. 4. *Proviso as to popish colleges.*

And it is proper here also to observe that by the 33 Geo. 3. c. 21. s. 1 & 14. Ir. all papists, &c. are relieved from all penalties and disabilities (except as herein excepted) save such as protestant subjects are liable to: Provided they shall take and subscribe the oath and declaration in this act contained, and also the oath appointed by the 13 & 14 Geo. 3. c. 35. Ir. (*vide* vol. 1. p. 300.) The 35 Geo. 3. c. 21. Ir. recites, that it hath become expedient that a seminary should be established for the education, exclusively, of persons professing the Roman catholic religion; and for this purpose provides, that the trustees herein named, and the persons to be hereafter elected, as by this act is directed, shall be trustees for the establishing, endowing, and maintaining one academy for the education of persons professing the Roman catholic religion; and that said trustees shall have power to receive donations to enable them to establish and endow such academy, and to purchase and acquire lands, not exceeding the annual value of £1000. and to erect and maintain all such buildings as may be, by said trustees, deemed necessary License of the ordinary. 32 Geo. 3. c. 21. s. 15. Ir. License of the ordinary conditionally dispensed with. 33 Geo. 3. c. 21. s. 1 & 14. Ir. Papists, &c. taking the oaths hereby appointed, put on the same footing in these respects as protestants. 2u. ? 35 Geo. 3. c. 21. s. 1. Ir. Seminary for the education of catholics established.

Trustees empowered to receive donations and purchase land.

s. 2.

Popish ecclesiastics may officiate.

s. 3.

Trustees, or any 7, may appoint president, &c.

And make bye-laws.

s. 5.

Rules when and how to be made.

s. 7.

Vacancies in the number of trustees how supplied.

s. 8.

Oath required to be taken by all members of this academy.

s. 9.

cessary for the lodging and accommodation of the president, masters, professors, fellows, and students of such academy. And by s. 2. it shall be lawful for any popish ecclesiastic to officiate in a chapel or building to be appointed for that purpose by the trustees, or any 7 of them. By s. 3. it shall be lawful for said trustees, or any 7 of them, to appoint one president, and so many masters, fellows, professors, and scholars, on the foundation, and ministers, servants, and assistants, with such pensions, salaries, exhibitions, wages and allowances, as to them shall seem fit; and to make such bye-laws, regulations, and statutes, for the government of said academy, and for the education and government of all persons on the foundation thereof, or to be educated therein, and for the appointment and election of a president, masters, fellows, members and officers of said academy, as to the trustees, or any 7 of them, shall seem meet; provided the same shall not be contrary to law. *By s. 5. the trustees shall assemble within one month after the passing of this act, at such time and place as shall be appointed by any 7 or more of them, by writing, and shall make rules for their assembling in future; and the acts of the trustees so assembled at their first or any future meeting, or the major part of them, shall be binding. By s. 7. so often as a vacancy shall happen by the death, removal, or resignation of the trustees, or any of them, said trustees shall at their meeting elect a person, being a natural born subject, to fill such vacancy. Provided s. 8. that no person professing the Roman catholic religion, shall act as a trustee, president, master, fellow, professor, teacher or tutor, or enjoy any place on the foundation of the said academy, or be admitted into the same academy as a student, officer, or servant, until he shall have taken and subscribed the oath appointed by the 13 & 14 Geo. 3. c. 35. Ir. And provided (s. 9.) that it shall not be lawful to receive into, or educate or instruct,

* The clauses of this act which relate to the submitting their bye-laws for the approbation of the lord lieutenant, and to the visitorial power of trustees, are amended by the 40 Geo. 3. c. 35. Ir. post 432.

struct in the said academy, any person professing the protestant religion, or whose father professed the protestant religion; and any president, master, professor, or teacher, who shall instruct any person in the said academy, professing the protestant religion, shall remain liable to such pains and penalties as he would have been before the passing of this act. But this statute hath been since amended by the 40 Geo. 3. c. 85. Ir. which recites (s. 1.) that a college or seminary hath been established at Maynooth in the county of Kildare, for the education of persons professing the popish or Roman catholic religion; and provides, that the lord chancellor, the chief justices of the courts of K. B. and C. B. the chancellor of the exchequer, and chief baron, and their successors, together with the earl of Fingal, doctor O'Reilly, and doctor Troy, shall be visitors of said college. And by s. 10. on the death or resignation of the said earl of Fingal, doctor O'Reilly, and doctor Troy, the trustees, or any 7 of them, shall at their first meeting after such vacancy, elect a proper person, being of the Roman catholic religion, and a natural born subject, to succeed to the office of a visitor, and shall return the name of the person so elected to the lord lieutenant of Ireland, within 10 days after such election, for his approbation; but if such person shall not be approved of in 1 month after his being so returned, then the trustees shall in like manner elect and return another, and so from time to time, so as that there shall be a continual succession of 3 proper persons professing the Roman catholic religion as visitors of said college. By s. 2. the visitors, or any 3 or more of them, shall once in every 3 years from the passing of this act, visit the said college, and call before them the president, vice-president, professors, tutors, and other members thereof, and the officers and servants of the said college, and diligently inquire into the government of the said college, and, if necessary, examine on oath every member thereof, touching the management, government, and discipline of the same, or any violation of its statutes or ordinances. And by s. 3. in addition to such triennial visitation, the

Protestants not to be educated therein

40 Geo. 3. c. 85. s. 1. Ir.

Visitors of the college of Maynooth appointed.

s. 10.

Vacancies how supplied.

s. 2.

Triennial visitation.

s. 3.

said

Extraordinary visitation.

Proviso as to matters of religion.

Visitorial power in matters of religion.

The chancellor, chief judges, and chancellor of Exc. no longer trustees.

Trustees no longer visitors.

Trustees how to sue and be sued.

President to be approved by lord lieutenant.

Oath of president.

said visitors, or any 3 of them, shall in like manner visit said college so often as required by order of the lord lieutenant signed by him: but the authority of the said visitors shall not affect the exercise of the Roman catholic religion, or the religious doctrine or discipline thereof within said seminary, otherwise than as herein provided: and in visiting said college, the visitors shall determine according to such bye-laws and regulations as have been or shall be made for the government thereof. And by s. 9. in all matters which relate to the exercise, doctrine, and discipline of the Roman catholic religion, the visitorial power over said college, shall be exercised exclusively by such of the visitors as are of the Roman catholic religion, in the presence of the lord chancellor, and 3 chief judges, and the chancellor of the exchequer, if they shall think proper to attend. By s. 4. the lord chancellor, and chief justices, chancellor of the exchequer, and chief baron, shall cease to be trustees, but the other trustees shall continue. And by s. 5. so much of the 35 Geo. 3. c. 21. as granted a visitorial power to the trustees, is also repealed. By s. 11. it shall be lawful for the trustees to sue or be sued, at law or in equity, by and in the name of their secretary; and in any suit instituted against the trustees, touching said college, it shall be sufficient to serve their secretary with the process or other order of court. By s. 6. any person elected president of said college, before he shall be capable of exercising his office, shall be approved of by the lord lieutenant, and shall, in the first term after such election and approbation, publicly make and subscribe the following oath in the court of chancery: " I —— having been
 " elected and approved as president of the Roman catholic college or seminary of Maynooth, do swear,
 " that I will diligently, faithfully, and conscientiously,
 " execute the said office to the best of my skill and judgment; and that I will, so far as in me lies, enforce a
 " due observance of the bye-laws, rules, and statutes,
 " made for the government and discipline thereof; and
 " that I will bear faithful and true allegiance, and to my
 " utmost endeavours inculcate the duties of faithful and
 " true

“ true allegiance to his majesty King George the third,
 “ and his successors, in every member of the said col-
 “ lege or seminary. So help me God. By s. 7. all
 bye-laws and regulations shall be approved by the lord
 lieutenant, and shall be transcribed on parchment,
 signed by the president of the college, and secretary of
 the board of trustees, and lodged from time to time in
 the office of the chief secretary of the lord lieutenant:
 provided that such bye-laws, &c. to be made, shall be
 binding, unless the lord lieutenant shall disapprove
 thereof, in one month from the time such bye laws shall
 be laid before him, and until such disapprobation shall
 have been expressed, all bye-laws, &c. already made
 shall be deemed valid. But by s. 8. nothing herein shall
 extend to any bye-laws, &c. affecting the exercise of the
 Roman catholic religion, or the doctrine, or discipline,
 or worship thereof, within the said college.

s. 7.

*Bye-laws to be
approved by lord
lieutenant, and
lodged with his
secretary.*

s. 8.

*Proviso as to bye
laws concerning
religion.*

VIII. Next as to the offence of *giving or receiving fo-
 reign popish education*: By the 1 Jac. 1. c. 4. s. 6. Eng. *§ 8.*
 every person who shall go, or shall send any child, or
 other person under his government, into any parts be-
 yond the seas, out of the king's obedience, to the intent
 to enter into or be resident in any college, seminary, or
 house of jesuits, priests, or other popish order, profes-
 sion, or calling, or repair to the same to be instructed,
 persuaded, or strengthened in the popish religion, or in
 any sort to profess the same; every person so sending
 such child, &c. beyond the seas, to any such purpose,
 shall forfeit to the king £100.; and every person so pas-
 sing or being sent beyond the seas, shall, in respect of
 himself only, and not of his heirs or posterity, be dis-
 abled to inherit, purchase, take, or enjoy any lands, &c.
 goods, &c. within the king's dominions; and all estates
 and interests in trust for him shall be void. But by s. 7.
 if any such person or child so passing or sent, shall after
 become conformable and obedient to the laws of the
 church, and shall repair to church, and continue in such
 conformity, he shall during such time as he shall so con-
 tinue, be discharged of every such disability and inca-
 pacity. By s. 8. no woman, nor any child under the

*Penalty for go-
ing or sending
to any foreign
popish seminary.*

*1 Jac. 1. c. 4.
s. 6. Eng.*

s. 7.

*Proviso as to
persons conform-
ing.*

s. 8.

No woman or child shall pass over the seas without license.

s. 9.
Forfeitures how applied, &c.

3 Jac. 1. c. 5.
s. 16. Eng.

Forfeiture of children departing the realm.

Proviso for conformity.

11 & 12 W. 3.
c. 4. s. 6. Eng.

Forfeiture how disposed of.

3 Car. 1. c. 2.
s. 1. Eng.

age of 21 years, (except sailors or ship-boys, or the apprentice or factor of a merchant,) shall be permitted to pass over the seas, except by license of the king, or of 6 or more of the privy council under their hands; on pain that the officer of the port that shall willingly or negligently suffer any such to pass, or shall not enter the names of such passengers licensed, shall forfeit his office, and his goods; and on pain that the owner of the ship that shall wittingly or willingly carry any such over sea without such license, shall forfeit the ship and tackle; and every master or mariner of or in any vessel offending as aforesaid, shall forfeit his goods, and be imprisoned for 12 months. By s. 9. one half of the forfeitures in this act, shall be to the king, and half to him that will sue by action of debt in any court of record at Westminster. And by the 3 Jac. 1. c. 5. s. 16. Eng. if the children of any subject within this realm, (the said children not being soldiers, mariners, merchants, or their apprentices or factors,) to prevent their good education in England, or for any other cause, shall be sent or go beyond seas, without license of the king, or of 6 of the privy council, (whereof the principal secretary to be one) under their hands and seals; every such child shall take no benefit by any gift, conveyance, descent, devise, or otherwise, of any lands, &c. goods, &c. until he, being of the age of 18 years, take the oath of obedience in the 3 Jac. 1. c. 4. (for which the oaths of allegiance and supremacy are substituted) before a justice of peace where the parent shall inhabit; and in the mean time the next of kin, (who shall be no popish recusant,) shall enjoy the same until he shall conform himself, and take the said oath, and receive the sacrament: And after such oaths taken, and conforming and receiving the sacrament, he who received the profits shall make account thereof, and in reasonable time make payment thereof, and restore the value of such goods. And by this section as amended by the 11 & 12 W. 3. c. 4. s. 6. Eng. (which, it is to be observed, misrecites it,) all such persons as shall so send such child or children over seas, shall forfeit £100 to him who shall discover and convict the offender. The 3 Car. 1. c. 2. Eng. further provides (s. 1.) that if any person

person shall go, or shall convey or send any child or other person into any parts beyond the seas, out of the king's obedience, to the intent to enter into, or be resident or trained up in any priory, abbey, nunnery, popish university, college, or school, or house of jesuits, priests, or in any private popish family, and shall be, there, by any jesuit, seminary priest, friar, monk, or other popish person, instructed, persuaded, or strengthened in the popish religion, in any sort to profess the same; or shall convey or send any sum of money, or other thing, for the maintenance of any child or other person gone or sent, and trained and instructed as aforesaid, or under colour of any charity, benevolence, or alms, towards the relief of any priory, &c. or religious house whatsoever; every person so sending, &c. any such child or other person, or any sum of money or other thing, and every person being sent beyond the seas, shall be disabled to sue or use any action, bill, plaint, or information, in course of law, or to prosecute any suit in any court of equity, or to be [**committee of any ward,*] or executor or administrator to any person, or capable of any legacy or deed of gift, or to bear any office; and shall forfeit his goods, and forfeit his lands, &c. during life. And by s. 3. the said offences shall be inquired of, &c. in the king's bench, or at the assizes of such counties where the offenders did last dwell or abide, or whence they departed out of the realm, or where they were taken. Provided (s. 2.) that no person so sent, &c. that shall, within 6 months after his return, conform himself to the established religion, and receive the sacrament according to the statutes made concerning conformity required from popish recusants, shall incur the penalties aforesaid. And by s. 4. if at any time after his return he shall so conform himself, he shall have his lands restored during the time that he shall so continue in such conformity. The 2 Ann. c. 6. Ir. also provides (s. 1.) that any papist, &c. who shall send, or cause or suffer to be sent, or conveyed, any child under the age of 21 (except sailors, ship-boys, or the apprentice or factor of some merchant) into any parts beyond the seas, out of the dominions of the crown, without the

Penalty of passing or sending any to be popishly bred beyond seas.

**"guardian" in 7W.3 c.4. Ir.*

s. 3.

Offences where inquirable.

s. 2 & 4.

Proviso as to converts.

2 Ann. c. 6.
s. 1. Ir.

Penalty of sending children abroad without license.

s. 2.

Jurisdiction of judges and justices of peace in respect to such offence.

license of the crown, or of the chief governor and 4 of the privy council of this kingdom, under their hands, shall incur the penalties of the 7 W. 3. c. 4. Ir.* And by s. 2. where any of the judges of the courts of K. B. or C. B. or barons of Exc. or any 2 justices of peace of any county, shall have reasonable cause to suspect that any such child (except before excepted, and except such children as shall be sent abroad with license) has been sent into foreign parts, they shall convene the father or mother, or such other person as had the tuition, education, or care of said child, and shall require him to bring before him or them the said child, within 2 months after such convening; and if such person shall not bring before said judge or justices of peace, such child, within said time, or shew cause for the obtaining further time till the next quarter sessions of the county, wherein such person shall reside, or shall not give good proof that said child is resident within this kingdom, or within England or Scotland, and not in parts beyond the seas, such child shall be taken to be then educated in foreign parts, and shall incur all the penalties in the 7 W. 3. c. 4. Ir.*

Certain popish books to be abolished.

3 & 4 Edw. 6.
c. 10. s. 1. Eng.

s. 2.

Images shall be destroyed.

By the 3 & 4 Edw. 6. c. 10. s. 1. Eng. all books called antiphoners, missals, grailes, processional, manuals, legends, pies, portuasses, primers in Latin and English, couchers, journals, ordinals, or other books or writings heretofore used for the service of the church, written or printed in the English or Latin tongue, other than such as shall be set forth by the king, shall be abolished for ever, and forbidden to be used within the king's dominions. And by s. 2. if any person, &c. that shall have in his or their custody any of said books or writings, or any images of stone, timber, alabaster, or earth, graven, carved, or painted, which have been taken out of or stand in any church or chapel, and do not destroy the

* The 7 W. 3. c. 4. s. 1. Ir. to which this statute refers, appears to be taken from the 3 Car. 1. c. 2. s. 1. Eng. *supra*, with which it corresponds in the description of the offence of foreign education, and in the punishment of persons guilty of such offence. But the 7 W. 3. c. 4. Ir. is repealed by the 32 Geo. 3. c. 21. s. 14. Ir. and it seems that these clauses of the 2 Ann. c. 6. *supra*, were therefore also meant to be repealed.

the same images, and deliver the said books to the mayor, bailiff, constable, or church-wardens of the town where such books shall be, to be by them delivered over openly within 3 months next after such delivery, to the archbishop, bishop, chancellor, or commissary of the diocese, to the intent that they may cause them immediately after to be openly burnt, or otherwise defaced and destroyed; he shall for every such book willingly retained, forfeit to the king for the 1st offence 20s. for the 2nd £4. and for the 3rd shall suffer imprisonment at the king's will. And by s. 3. if any mayor, &c. do not, within 3 months after receipt of the same books, deliver such books to the archbishop, &c.; and if such archbishop, &c. do not, within 40 days after the receipt of such books, burn, deface, and destroy the same; every of them so offending shall forfeit £40. The one half of all which forfeitures shall be to any subject who shall sue in any court of record, by action of debt, &c. By s. 4. the justices of assize in their circuits, and justices of peace in the general sessions, may inquire, &c. of said offences. But by s. 5. any person may use and keep any primers, in the English or Latin tongue, set forth by king Henry VIII, so that the sentences of invocation or prayer to saints be blotted or put out of the same. And by s. 6. nothing herein shall extend to any image or picture set or graven upon any tomb in any church, chapel, or church-yard, only for a monument of any king, nobleman, or other dead person, which hath not been commonly reputed and taken for a saint. The 3 Jac. 1. c. 5. Eng. also provides, (s. 25.) that no person shall bring from beyond the seas, nor shall print, sell, or buy any popish primers, ladies psalters, manuals, rosaries, popish catechisms, missals, breviaries, portals, legends, and lives of saints, containing superstitious matter, printed or written in any language, nor any other superstitious books written in the English tongue; upon pain of 40s. for every book, one third to the king, one third to him that will sue, and one third to the poor of the parish where such books shall be found, to be recovered by action of debt, &c. in any court

Popish books to be delivered to be burnt or defaced.

Penalty.

s. 3.

Penalty of mayor, &c. or bishop &c. omitting their duty therein.

s. 4.

Offences how tried.

s. 5.

Exception of primers set out by Hen. 8.

s. 6.

Exception of certain images upon tombs.

3 Jac. 1. c. 5. s. 25. Eng.

Penalty for printing, buying, or selling popish books.

court of record; and the said books to be burned. And by s. 26. any 2 justices of peace within their jurisdiction, (and chief officers of cities and towns corporate) may search the houses and lodgings of every popish recusant convict, or of every person whose wife is a popish recusant convict, for popish books and relicks of popery; and if any altar, pix, beads, pictures, or such like popish relicks, or any popish book, shall be found in their custody, as in the opinion of said justices, &c. shall be thought unmeet for such recusant to have or use, the same shall presently be defaced and burnt, if it be meet to be burned, and if it be a crucifix, or other relick of any price, the same to be defaced at the general quarter sessions of the peace in the county where the same shall be found, and the same so defaced to be restored to the owner. No statute in Ireland contains any provisions similar to those of the 3 & 4 Edw. 6. c. 10. and 3 Jac. 1. c. 5. save that by the 2 Ann. c. 6. s. 27. Ir. all sheriffs, justices of the peace, and other magistrates, are required to demolish all crosses, pictures, and inscriptions, that are any where publicly set up, and are the occasions of any popish superstitions. And this statute recites (s. 26.) that the superstitions of popery are greatly increased and upheld by the pretended sanctity of places (especially of a place called Saint Patrick's purgatory in the county of Donegal,) and of wells, to which pilgrimages are made by vast numbers at certain seasons; by which the peace of the public is disturbed, &c. and therefore enacts, that all such meetings and assemblies shall be deemed riots; and all sheriffs, justices of peace, and magistrates, are required to put the laws in force against such offenders. And by s. 27. every person meeting at such well or place contrary to this act, who shall be convicted by his confession, or by the oath of 1 witness, before any justice of peace in any county, or chief magistrate of any city, &c. where the offence shall be committed, or the party apprehended, shall forfeit 10s. to be paid at such time as by the said justice or magistrate shall be appointed; one moiety to such informer as shall procure such offender to be convicted, and the other moiety to the poor of such parish; and

s. 26.

Justices may search for popish books, or relicks of popery.

Crucifixes, &c. to be defaced.

2 Ann. c. 6. s. 27. Ir.

Magistrates to destroy crosses, &c.

s. 26.

Assemblies at wells, &c. deemed riots.

s. 27.

Penalty of persons meeting there.

and if such offender shall not pay the said sum, then the said justice or magistrate shall commit him to some constable or inferior officer of such county, city, &c. where the offence shall be committed, or the party apprehended, to be publicly whipped; which punishment the said constable, &c. shall publicly inflict pursuant to the order of said justice, &c. within 24 hours after such order received: and every person who at such assemblies build booths, sell ale, victuals, or other commodities, and shall be convicted by the view of any justice of peace of the county, or chief magistrate of the town, wherein the same shall be, or by confession of the party, or oath of 1 witness, before such justice or magistrate, shall forfeit 20s. to be levied by distress and sale of goods, and in default of distress by imprisonment of the offender till payment; and said penalties of 20s. shall be applied to the service of the public, in such manner as the justices of peace for said county at their quarter-sessions shall appoint. The 9 W. 3. c. 1. s. 6. Ir. may be here also stated, which enacts, that no person shall bury any dead in any suppressed monastery, abbey, or convent, (that is not made use of for celebrating divine service according to the liturgy of the church of Ireland) or the precincts thereof, upon pain of forfeiting £10; which sum may be recovered from any person present at such burial, contrary to this act; which forfeitures the justices of peace in their respective counties are to determine; and one moiety of said forfeitures shall be to the informer, and the other to the minister and church-wardens for the poor of the parish: Provided (s. 7.) that any person may appeal from the determination of such 2 justices to the next judges of assize, or to the justices of peace at the next quarter sessions.

Penalty of selling ale, &c. there.

9 W. 3. c. 1. s. 6. Ir.

Penalty for burying in suppressed monasteries, &c.

s. 7.

Appeal given.

IX. The 3 Jac. 1. c. 21. Eng. seems to be properly referable to the crime of *blasphemy*: This statute enacts, that if any person shall in any stage-play, interlude, shew, may-game, or pageant, jestingly or profanely, speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit £10.: one moiety to the king, the other to him that will

§ 9.

Penalty of profane scoffing at the christian religion.

3 Jac. 1. c. 21. Eng.

will sue in any court of record at Westminster, wherein, &c. To which there is no corresponding statute in Ireland.

§ 10.

Penalty of profane cursing and swearing.

19 Geo. 2. c. 21. s. 1. Eng.

s. 2.

Swearing, &c. in the hearing of any justice, &c.

s. 3.

Constables, &c. to seize persons profanely swearing, &c. if unknown:

And if known, information to be made.

s. 4.

Punishment if penalty not paid or secured.

X. Next as to *profane cursing and swearing*: By the 19 Geo. 2. c. 21. s. 1. Eng. (which repeals the 21 Jac. 1. c. 20. and 6 & 7 W. 3. c. 11.) if any person shall profanely curse or swear, and be convicted on the oath of 1 witness, before any justice of peace, or before the mayor, justice, bailiff, or other chief magistrate of any city or town corporate, or by confession, he shall forfeit: *viz.* every day labourer, common soldier, common sailor, and common seaman, 1s.; and every other person under the degree of a gentleman, 2s.; and every person of or above the degree of a gentleman, 5s.; And in case any such person, after conviction, offend a 2nd time, he shall forfeit double; and for every other offence after a 2nd conviction, treble the sum first forfeited. And by s. 2. in case any person profanely swear or curse in the hearing of any justice of peace, &c. such justice &c. shall convict every such offender in the manner herein after set forth, without any other proof. And by s. 3. in case any person profanely swear or curse in the hearing of any constable, or other peace officer, such peace officer shall, in case such person be unknown, seize and detain him, and carry him before the next justice, &c. of the place where such offence was committed; and the said justice, &c. shall, on the oath of such peace officer, convict the offender in manner herein after directed; and in case such person be known to such peace officer, he shall make information before some justice, or chief magistrate, in order that the offender be convicted and punished. By s. 4. every such justice of peace, &c. shall, upon information given upon oath of any such peace officer, or of any other person, cause the offender to appear before him; and upon such information being proved, convict such offender as by this act is prescribed: and in case such offender pay not immediately the sum forfeited, or give security to the satisfaction of such justice, &c. it shall be lawful for such justice, &c. to commit the offender to the house of correction

rection for the county, &c. where such offence is committed, to be kept to hard labour for 10 days. And by s. 5. in case any common soldier in his majesty's service, or any common sailor or seaman, be convicted of profane cursing or swearing, and pay not immediately the penalty, or give security for the same, and the cost of the information, summons, and conviction, instead of being committed to the house of correction, he shall be publicly set in the stocks for 1 hour, for every single offence; and for any number of offences whereof he is convicted at the same time, 2 hours. By s. 6. if any justice of peace, &c. wilfully omit the performance of his duty in the execution of this act, he shall forfeit £5. one moiety to the use of the informer, and the other to the poor of the parish wherein he resides; to be recovered by action &c. in any court of record at Westminster, wherein, &c. And by s. 7. if any constable or other peace officer wilfully omit the performance of his duty in the execution of this act, and be convicted by the oath of one witness, before any justice of peace, &c. he shall forfeit 40s. to be levied by distress and sale of goods, by warrant of such justice, &c.; and to be disposed of, one moiety to the informer, and the other to the poor of the parish where such offence is committed; and in case such offender have not sufficient goods whereon to levy the penalty, it shall be lawful for such justice, &c. to commit such offender to the house of correction, for the county or place, to be kept to hard labour for 1 month. By s. 8. a form is prescribed in which every conviction for profane swearing or cursing shall be drawn: and such conviction shall not be removed by *certiorari* into the king's bench, but shall be final; and the said justice, &c. before whom such conviction is made, shall cause the same to be wrote upon parchment, and returned to the next general or quarter sessions of the peace for the county wherein such conviction was made, to be filed by the clerk of the peace. By s. 9. all justices of peace, &c. shall put this act in execution within their jurisdictions, although such justices, &c. be rated and pay to the relief of the poor of any parish or place where any offence

s. 5.

Soldiers and sailors not paying, &c. the penalty, to be set in the stocks.

s. 6.

Justices, &c. not doing their duty forfeit £5.

s. 7.

Penalty for constables, &c. not doing their duty.

s. 8.

Form of conviction prescribed.

Conviction final, and to be recorded by clerk of peace.

s. 9.

Justices, &c. to act though rated &c.

- Penalties how disposed of.* s. 10. offence is committed. By s. 10. all penalties inflicted by this act, for profane cursing and swearing, shall be disposed of for the benefit of the poor of the parish wherein such offence was committed; and all charges of information and conviction shall be paid by the party offending, if able, over and above the penalties: which charges shall be ascertained by the justice of peace, &c. before whom such conviction is made; and in case such party be not able, or shall not immediately pay the said charges, or give security for the same, it shall be lawful for the justice, &c. to commit such offender to the house of correction, to be kept to hard labour for 6 days, over and above such time for which such offender may be committed in default of payment of the penalties, and in such case no charges of information and conviction shall be paid by any person.
- Offenders to pay charges or committed to house of correction.* s. 11. *Pleading.* *Costs.* By s. 11. if any action be commenced against any person for doing any thing in pursuance of this act, concerning the said offences, the defendant may plead the general issue, &c. and shall have treble costs of verdict, nonsuit, or discontinuance.
- Limitation.* s. 12. By s. 12. no person shall be troubled for any offence against this statute, unless the same be proved or prosecuted within 8 days after the offence committed.
- Act how proclaimed.* s. 13. By s. 13. this act shall be publicly read 4 times in the year, in all parish churches, and public chapels, by the parson, vicar, or curate, immediately after morning or evening service, *viz.* The Sunday next after the 25th of March, 24th of June, 29th of September, and 25th of December; or in case divine service be not performed in any such church, &c. on any of said Sundays, then upon the first Sunday after any of the said quarterly days on which divine service is performed, under pain of forfeiting £5. for every neglect; to be levied by distress and sale of the offenders goods, by warrant of any justice or other chief magistrate.
- Fee of clerk.* s. 14. By s. 14. the clerk of the justice, mayor, bailiff, or other chief officer, before whom proceedings upon this act shall be had, may take for the information, summons, and conviction of every offender, 1s. and no more. The 7 W. 3. c. 9. Ir. (which amends the 10&11 Car.1.c.1.Ir. and is taken from the 6&7 W. 3.

7 W. 3. c. 11. Eng.) also provides, that if any person 7 W. 3. c. 9.
 profanely swear and curse in the hearing of any justice s. 1. 1r.
 of peace of the county, or of the mayor or other head *Forfeiture for cursing or swearing.*
 officer, or justice of peace, for any city or town corporate, where such offence shall be committed, or shall be
 thereof convicted by the oath of 1 witness, or by confession before any justice of peace, &c. where the offence shall be committed, such offender shall forfeit to *Mode of conviction.*
 the use of the poor of the parish where every such offender shall be committed: viz. every servant, day labourer, common soldier, and common seaman, 1s.; and *Degrees of persons.*
 every other person 2s.: and in case any person shall, after conviction, offend a 2nd time, he shall pay double; and if a 3rd time, treble the sum paid for the 1st offence. *Number of offences.*
 And by s. 2. upon neglect or refusal of payment, any justice of peace, &c. where the offence shall be committed, shall send his warrant to the constable, tythingman, church-warden, or overseer of the poor, of the parish where the offence shall be committed, or where the offender shall inhabit, commanding them or one or more of them, to levy by distress and sale of the goods of the offender, the sum so forfeited; and in case no such distress can be had, then such offender, being above the age of 16 years, shall by warrant of said justice, &c. be publicly set in the stocks for one hour for every single offence, and for any number of offences whereof he shall be convicted at one time, 2 hours; and *Forfeiture how levied.*
 if such offender be under the age of 16 years, and shall not forthwith pay said forfeitures, then he shall by warrant as aforesaid, be whipt by the constable, or by the parent, guardian, or master of such offender, in the presence of the constable. By s. 3. if any justice of the peace, or chief magistrate, shall wilfully and willingly omit his duty in the execution of this act, he shall forfeit £5.; one moiety to the informer, to be recovered by action, &c. in any of the king's courts, wherein, &c. *Punishment in default of distress.*
 By s. 4. if any action or suit shall be brought against any justice of peace, or other officer or person, for doing any thing in pursuance of this act concerning said offences, the defendant may plead the general issue, &c. *Penalty for default of magistrates.*
 and *Pleading.*
Costs.

and shall have treble costs of verdict, nonsuit, or discontinuance. And by s. 5. no person shall be troubled for any offence against this statute, unless the same be proved or prosecuted within 10 days after the offence committed. By s. 7. the justices of peace, mayor, or other head officer, shall register in a book, all the convictions made before him upon this act, and the time of making thereof, and for what offence; and shall certify the same to the next quarter sessions of the peace for the county or place where the offences are committed, to be there kept upon record by the clerk of the peace, to be seen without fee.

§ 11. XI. The 9 Geo. 2. c. 5. Eng. (which repeals the 1 Jac. 1. c. 12. except a clause thereof repealing the 5 Eliz. c. 16.) provides (s. 3.) that no prosecution shall be against any person for *witchcraft, sorcery, enchantment, or conjuration*, or for charging another with any such offence. By s. 4. if any person shall pretend to use witchcraft, &c. or undertake to tell fortunes, or, from skill in any occult or crafty science, to discover where or in what manner any goods supposed to be stolen or lost may be found; such person being convicted on indictment or information in England, or on indictment or libel in Scotland, shall suffer imprisonment for 1 year, and once in every quarter of the said year, in some market town of the county, upon the market day, stand in the pillory for one hour, and shall if the court think fit, be obliged to give sureties for good behaviour, in such sum, and for such time as the court shall judge proper, or be imprisoned until such sureties be given. But in Ireland the 28 Eliz. c. 2. Ir. (which is taken from the 1 Jac. 1. c. 12. Eng.) remains unrepealed. This statute enacts, that if any person shall use any invocation or conjurations of evil spirits for any purpose, or shall exercise any witchcraft, enchantment, charm, or sorcery, whereby any person shall be killed, such offender, his aiders and counsellors, shall suffer death as a felon without benefit of clergy: saving to the wife of such person her dower, and to the heirs and successors of such person, and all other persons; all titles and hereditaments of any estate of inheritance

s. 5.

Limitation.

s. 7.

Convictions to be registered.

No person to be prosecuted for witchcraft.

9 Geo. 2. c. 5. s. 3. Eng.

s. 4.

Punishment of persons pretending to witchcraft

28 Eliz. c. 2. s. 1. Ir.

Persons using witchcraft to certain purposes, guilty of a capital felony.

heritance, and otherwise, as though no such attainder had been had. And by s. 2. if any person shall use any witchcraft, &c. whereby any person shall be wasted, consumed, or lamed in his body or member, or whereby any goods of any person shall be destroyed, wasted, or impaired, such offender, his counsellors and aiders, shall for his first offence suffer imprisonment by the space of one year, and once in every quarter of the same year, shall, in some market town, upon the market day, or at such time as any fair shall be kept there, stand openly upon the pillory for 6 hours, and there openly confess his error and offence, and for the second offence shall suffer death as a felon without benefit of clergy: saving to the wife her dower, and to all other persons, their heirs and successors, their rights as though no such attainder had been had. Provided (s. 3.) that if the offender, in any of the cases aforesaid for which the pains of death shall ensue, shall be a peer, his trial shall be had by his peers, as in cases of felony or treason. By s. 4. if any person shall take upon him by witchcraft, &c. to tell in what place any treasure of gold or silver may be found, or where things lost or stolen may be found, or shall practise any witchcraft, &c. to provoke any person to unlawful love, or to hurt or destroy any person in his body, member, goods or chattels, every such person shall suffer imprisonment for one year, and once in every quarter of the said year, shall in some market town, upon the market day, or at such time as any fair shall be kept there, stand openly upon the pillory for 6 hours, and there openly confess his error and offence: And any person being convicted a second time of the like offence, shall forfeit to the crown all his goods, and suffer imprisonment during life.

s. 2.

*Using witchcraft to other purposes a misdemeanor.**Second offence a capital felony.*

s. 3.

A peer to be tried by his peers.

s. 4.

Punishment of persons pretending to certain species of witchcraft.

XII. With respect to the offence of *Simony*: The 31 Eliz. § 12. c. 6. s. 5 & 7. Eng. has been already stated (vol. 1. p. 541—2.) so far as it declares simoniacal contracts and presentations to be void: But this statute (s. 5.) also enacts, that every person, &c. that shall give or take any money, reward or benefit, or take or make any promise or assurance for the presenting or collating to any

Penalty for giving or taking money, &c. to present to a benefice.

31 Eliz. c. 6. s. 5. Eng.

any benefice with cure of souls, dignity, prebend, or living ecclesiastical, shall forfeit the double value of one year's profit of such benefice, &c. and the person so corruptly seeking or accepting any such benefice, &c. shall be adjudged a disabled person to have the same.

s. 6.

Penalty for presenting, or being presented to a benefice for reward.

And by s. 6. if any person shall for money or profit (other than for lawful fees) or for any promise or assurance of money or profit, admit, institute, instal, induct, invest, or place any person in any benefice, &c. such person shall forfeit the double value of one year's profit of such benefice, &c. and the same benefice, &c. shall be void; and the patron shall present or collate unto the same, as if the party so admitted, &c. were dead. And

s. 8.

Penalty for corrupt resigning or exchanging of a benefice.

by s. 8. if any incumbent of any benefice with cure of souls, shall corruptly resign or exchange the same, or corruptly take for the resigning or exchanging the same, any pension, money, or benefit, as well the giver as the taker shall lose double the value of the sum so given; the one moiety as well thereof, as of the forfeiture of double the value of one year's profit, to be to the crown, and the other moiety to him that will sue for the same in any court of record. This act also provides, (s. 2.) that if any person, &c. which hath election,

s. 2.

Penalty for taking a reward for a voice in electing a fellow, &c. into a college, &c.

presentation, or nomination, or voice or assent in the election, &c. of any fellow, scholar, or other person, to have place in any cathedral or collegiate churches, colleges, schools, hospitals, halls, or societies, shall take any money or other profit, or any promise or assurance to receive any money or other profit, either to himself or his friends, for his voice or assent in electing, &c. any officer, fellow, scholar, or other person, &c. the place or office which such person so offending shall have in the said churches, &c. shall be void; and the crown, and every other person to whom the presentation, donation, election, or disposition, shall belong, of the places of the person offending, may present, elect, or appoint any other person as if the person so offending were dead. And by s. 3. if any fellow, officer or scholar,

s. 3.

Penalty for giving or taking money for resigning a place in a college, &c.

of any of the said churches, &c. or other persons having place in the same, shall receive, or contract to receive any money, or profit for resigning the same for

any

any other to be placed in the same; every person so contracting or agreeing to have any thing for the same, shall forfeit double the sum or value of the thing so received or agreed to be received: and every person by whom, or for whom, any money or reward shall be given, or agreed to be paid, shall be incapable of that place for that turn; and they to whom it shall appertain may elect, &c. any other person fit, as if the person by or for whom any such money or reward shall be given, or agreed to be paid, were dead. By s. 4. at the time of

s. 4.

every such election, &c. as well this act, as the statutes of the same places concerning such election, &c. shall be publicly read; upon pain that every person in whom default thereof shall be, shall forfeit £40. All which

*At every election
this statute to be
read.*

forfeitures shall be recovered in the courts of record, by any person that will sue for the same; the one moiety to him that will sue, and the other to the use of the church, college, hall, hospital, school or society where such offence shall be committed. But by s. 9. this act shall not restrain any punishment prescribed by the laws ecclesiastical, for any of the offences before mentioned.

*Forfeitures how
disposed of and
recovered.*

s. 9.

Proviso.

By s. 10. if any person shall receive any money or profit, or take any promise or assurance to recover any money or profit, either to him or his friends (lawful fees excepted) to procure the ordaining of any minister, or giving orders or license to preach, he shall forfeit £40. and the party so corruptly taking orders shall forfeit £10: And if within 7 years after such corrupt receiving orders, he shall accept any promotion ecclesiastical, then from the induction or installation the same promotion shall be void; and the patron shall present, collate, or dispose of the same, as if the party were dead. The one moiety of which forfeitures shall be to the crown, and the other to him that will sue by action of debt, &c. in any court of record. It has been already observed (vol. I. p. 512.) that no statute has been passed in Ireland to restrain any species of the offence of simony.

s. 10.

*Penalty for giving or taking
reward for ordination or license
to preach.*

XIII. The *profanation of the Lord's day*, and other days appointed to be kept holy, is another offence against God and religion, in respect to which the 27 Hen. 6. c. 5.

§ 13.

*Certain days
wherein fairs
and markets are
not to be kept.*

E. & I.

27 Hen. 6. c. 5.
E. & I.

Penalty.

5 & 6 Edw. 6.
c. 3. Eng.

*What days shall
be kept holy.*

s. 2.

*What days shall
be fasting-days.*

E. & I. provides, that all fairs and markets in the principal feasts of the Ascension, *Corpus Christi*, the Assumption, the day of All-Saints, Whit-Sunday, Trinity Sunday, and other Sundays, and Good Friday, shall cease from shewing of goods, (necessary victuals except) upon pain of forfeiture of the goods to the lords of the franchise, the 4 Sundays in harvest only except. Nevertheless they which in old time had no day to hold their fair or market but only upon the festival days, shall have power to hold within 3 days next before the said feasts, or next after, proclamation first being made to the common people, upon which day the fairs shall be holden, to be certified without any fine or fee to the king. And they which of old have, by special grant, sufficient days before the feasts aforesaid, or after, shall in like manner hold fairs and markets the full number of days, and Sundays, and Good Friday except. By the 5 & 6 Edw. 6. c. 3. Eng. the days hereafter mentioned shall be kept holidays: viz. all Sundays; the days of the feast of the Circumcision of Christ; of the Epiphany; of the Purification of the blessed Virgin; of St. Matthew the apostle; of the Annunciation of the blessed Virgin; of St. Mark the evangelist; of St. Philip and Jacob the apostles; of the Ascension of our Lord; of the Nativity of St. John Baptist; of St. Peter the apostle; of St. James the apostle; of St. Bartholomew the apostle; of St. Matthew the apostle; of St. Michael the Archangel; of St. Luke the evangelist; of St. Simon and Jude the apostles; of All Saints; of St. Andrew the apostle; of St. Thomas the apostle; of the Nativity of our Lord; of St. Stephen the martyr; of St. John the evangelist; of the Holy Innocents; Monday and Tuesday in Easter-week; and Monday and Tuesday in Whitsun-week; and no other day shall be commanded to be kept holy, or to abstain from labour. And by s. 2. every even or day before any of the aforesaid feasts of the Nativity of our Lord, of Easter, of the Ascension, Pentecost, and the Purification and the Annunciation of the blessed Virgin, of All Saints, and of all the said feasts of the apostles, (other than of St. John the evangelist

list, and Philip and Jacob) shall be fasted and observed, and none other even or day shall be commanded to be fasted. By s. 3. it shall be lawful to all archbishops and bishops, and all other having spiritual jurisdiction, to inquire of every person that shall offend in the premises, and to punish such offender by the censures of the church, and to enjoin penance convenient. [*By s. 4. this act shall not abrogate the abstinence from flesh in Lent, or on Fridays and Saturdays, or on any other day appointed to be kept by the 2 & 3 Edw. 6. c. 19. saving only of those evens whereof the holidays next following are abrogated by this statute.] By s. 5. when any of the said feasts (the evens whereof be commanded to be kept fasting days) fall upon the Monday, the Saturday before, and not the Sunday, shall be commanded to be fasted for the even of such feast. By s. 6. it shall be lawful to every husbandman, labourer, fisherman, and to all other persons, upon the holidays aforesaid, in harvest, or at any other times when necessity shall require, to labour, ride, fish, or work. By s. 7. it shall be lawful to the knights of the garter to keep St. George's feast, yearly, the 22d, 23d, and 24th days of April, and at such other times as, yearly, shall be thought convenient by the king, and the knights of said order. The 7 W. 3. c. 14. Ir. also appoints the several days above-mentioned to be kept holy, with the addition of the day of the feast of St. Barnabas the apostle, and of the Conversion of St. Paul, [*and the 23d day of October, 5th of November, 30th of January, and 29th of May, yearly,]: And enacts that no other day, except the days aforesaid, and such other days as on some extraordinary occasion shall be set apart by order of the king, or chief governor of this kingdom, shall be kept or commanded to be

s. 3.

Punishment by ecclesiastical censures.

s. 4.

Proviso.

s. 5.

When Saturday shall be a fast day instead of Sunday.

s. 6.

Proviso as to works of necessity.

s. 7.

*Knights of the garter may solemnize St. George's feasts.**7 W. 3. c. 14. Ir.**What days only shall be kept holy.*

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kept

* The statutes respecting fish days. viz. 2 & 3 Edw. 6. c. 19. 5 Eliz. c. 5. 35 Eliz. c. 7. 39 Eliz. c. 18. 1 Jac. 1. c. 25. and 21 Jac. 1. c. 28. seem to have all expired. The 3 Car. 1. c. 4. and 16 Car. 1. c. 4. continue only so much of the 5 Eliz. c. 5. as doth not concern the eating of flesh, or using of fish upon the Wednesday, &c.

* *Vide* page 457. *post.*

Penalty for labourers, &c. refusing to work upon other days.

s. 2.

Penalty of constable, &c. refusing to execute said punishment.

s. 3.

What justices shall execute this act, and when.

This act to be given in charge, and neglect of justices, &c. inquired of at assizes.

1 Car. 1. c. 1.
Eng.

kept holy, or to abstain from lawful bodily labour. And if any common labourer, being hired, or other servant retained, shall refuse to work upon any other day than the said several days, upon the usual and accustomed wages, such person being thereof convicted by his confession, or by the testimony of a witness upon oath, before any justice of peace in any county, or chief officer of any city, &c. where the offence shall be committed, or the party apprehended, shall forfeit 2s. to be paid at such time, or to such person, as by such justice or chief officer shall be appointed; to be disposed of to the poor of the parish where the offence shall be committed; and if such offender shall neglect or refuse to pay said sum, then such justice, &c. shall commit such offender to some constable or inferior officer of the county, &c. where said offence shall be committed, or the party apprehended, to be publicly whipped; which punishment shall be inflicted within 24 hours after such order made. And by s. 2. if such constable, &c. do not execute (by himself, or by some other to be by him procured) the punishment aforesaid, it shall be lawful for any justice or chief officer of such county, &c. upon information thereof, to bind such constable, &c. to the next quarter-sessions of the peace, or general assizes or gaol delivery, there to be proceeded against for his contempt; and in case he shall be found guilty thereof, upon examination of a witness, he shall be fined at the discretion of the court, so as such fine do not exceed 20s. Provided (s. 3.) that no justice or head officer do execute this statute for any offence done unto himself, or whereof complaint was not made within 10 days after such refusal to work. And all justices of assize and gaol delivery are required to give this act in charge, at every assize or gaol delivery within their circuits; and to inquire of the neglect of all justices of the peace, and others, in the execution of this act. The 1 Car 1. c. 1. Eng. further enacts, that there shall be no meetings or concourse of people out of their own parishes on the Lord's day for any sports and pastimes, nor any bear-baiting, bull-baiting, interludes, common plays

plays, or other unlawful exercises used by any within their own parishes, and every person offending shall forfeit 3s. 4d. to the use of the poor of the parish; and if any justice of peace of the county, or chief officer of any city or town corporate, upon their view, or confession of the party, or proof of one witness upon oath, shall find any person offending in the premises, the said justice, &c. shall give warrant to the constables and church-wardens of the parish to levy the penalty by distress and sale of goods; and in default of distress, that the party offending be set in the stocks 3 hours. And if any man be sued for execution of this law, he may plead the general issue; provided that no man be impeached by this act, except he be called in question within one month after the offence; provided also that the ecclesiastical jurisdiction by this act shall not be abridged. And by the 3 Car. 1. c. 1. Eng. no carrier with horses or waggons, nor carmen with carts, nor wainman with any wain, nor drovers with cattle, by themselves, or any other, shall travel upon the Lord's day, upon pain to forfeit 20s.; or if any butcher shall kill or sell any victual upon the said day, such butcher shall forfeit 6s. 8d. the said offences being done in view of any justice of peace, mayor or head officer of any city or town corporate, or being proved upon oath by 2 witnesses, or by confession, before any such justice, &c.; which penalties may be levied by any constable or church-warden by warrant from such justice, &c. by distress and sale of goods; or shall be recovered by any that will sue for the same by bill, &c. in any court of record in any city or town corporate, or before justices of peace in their general sessions; all which forfeitures shall be employed to the use of the parishes, saving that it shall be lawful for any such justice, &c. out of the forfeitures to reward any that shall inform, so that such reward exceed not the 3d part of the forfeiture; provided that such bill, &c. be prosecuted in the county, &c. where such offence shall be committed; provided that it shall be lawful for any constable or church-warden that shall have any action brought against them for any distress taken by force of this act, to plead the general issue: Provided likewise

Penalty for unlawful meetings and sports on Sunday.

Penalty enforced.

Pleading.

Limitation.

Proviso.

3 Car. 1. c. 1. Eng.

Penalty for carriers, &c. travelling, or butchers killing or selling meat, on Sunday.

Penalties how recovered, &c.

Pleading.

- Limitation.* that no person be impeached by this act, unless he be questioned within 6 months after the offence: Provided further that this act shall not abridge the authority of the
- Proviso.* courts ecclesiastical. And by the 29 Car. 2. c. 7. s. 1. Eng. all the laws in force concerning the observation of the Lord's day, and repairing to church thereon, shall be put in execution; and all persons shall on every Lord's day apply themselves to the observation of the same by exercising themselves in piety and true religion, publicly and privately; and no person shall do any worldly labour, or work of their ordinary callings, upon the Lord's day, works of necessity and charity excepted; and every person, of the age of 14 years or upwards, offending in the premises, shall forfeit 5s. And no person shall publicly cry, or expose to sale, any goods upon the Lord's day, upon pain to forfeit the same goods.
- Penalty for working or exposing goods to sale on a Sunday.* And by s. 2. no drover, horse-courser, waggoner, butcher, higler, or any of their servants, shall travel or come into their inn or lodging upon the Lord's day, upon pain to forfeit 20s. and no person shall travel upon the Lord's day with any boat, wherry, lighter, or barge, except upon extraordinary occasions, to be allowed by some justice of the peace or head officer, upon pain to forfeit 5s; and if any person shall be convicted before any justice of peace, or chief officer, upon view or confession of the party, or proof of one witness by oath, the said justice, &c. shall give warrant to the constables or churchwardens to seize the goods cried or put to sale, and to levy the other forfeitures by distress and sale of goods; and in default of distress, the offender shall be set in the stocks 2 hours; and all the penalties aforesaid shall be employed to the use of the poor of the parish, saving that it shall be lawful for any such justice, &c. out of the penalties to reward any person that shall inform, so as such reward exceed not the 3d part of the penalties.
- Penalty how recovered, &c.* But by s. 3. nothing in this act shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cook-shops or victualling houses, for such as otherwise cannot be provided, nor to the crying of milk before 9 in the morning, or after 4 in the afternoon. And by s. 4. no person shall be prosecuted for any
- Penalty for drovers, &c. travelling on Sunday.*
- Proviso.*
- s. 4.*

any offence beforementioned, unless he be prosecuted within 10 days after the offence. By s. 5. if any person which shall travel upon the Lord's day shall be then robbed, no hundred shall be answerable; nevertheless the inhabitants of the counties and hundreds, after notice of any such robbery, or after hue and cry brought, shall make fresh pursuit after the offenders with horsemen and footmen, according to the 27 Eliz. c. 13. upon pain of forfeiting to the king as much money as might have been recovered against the hundred if this law had not been made. To these provisions of these several statutes, special exceptions are made by the 10 & 11 W. 3. c. 24. Eng. 11 & 12 W. 3. c. 21. Eng. 9 Ann. c. 23. Eng. 2 Geo. 3. c. 15. Eng. and 34 Geo. 3. c. 61. Eng. The 7 W. 3. c. 17. Ir. in a manner similar to the 29 Car. 2. c. 7. and 3 Car. 1. c. 1. *supra*, also provides, that all persons shall, on every Lord's day, apply themselves to the observation of the same, by exercising themselves in the duties of piety and true religion, publicly and privately: and no person shall do any worldly labour, or work of their ordinary callings upon the Lord's day, works of necessity and charity excepted: and every person, being of the age of 14 years or upwards, offending in the premises, shall forfeit 5s.; and no person shall publicly cry, or expose to sale any goods upon the Lord's day, upon pain to forfeit the same goods. And by s. 2. no drover, horse-courser, waggoner, carrier, butcher, higler, or any of their servants, shall travel or come into their inn or lodging upon the Lord's day, upon pain to forfeit 20s. By s. 3. no person shall play or exercise any hur-ling, commoning, foot-ball playing, cudgels, wrestling, or other games, pastimes, or sports, on the Lord's day, upon pain to forfeit 12d. to be immediately paid to such justice of peace or officer before whom the conviction shall be. And if any person offending against this act, shall be convicted before any justice of peace of the county, or chief officer or justice of peace of any city or town corporate where the offence shall be committed, upon his view, or confession of the party, or proof of one witness by oath, said justice, &c. shall give warrant to

Limitation.

s. 5.

Hundred not responsible to persons travelling on a Sunday.

7 W. 3. c. 17.

Ir.

Penalty for working, or exposing goods to sale on a Sunday.

s. 2.

Penalty of drover, &c. travelling on Sunday.

s. 2.

*Unlawful sports prohibited.**Penalties how recovered, &c.*

to the constables or church-wardens of the parish where such offence shall be committed, to seize the goods cried or put to sale, and to sell the same; and to levy the other forfeitures by distress and sale of goods; and in default of distress the offender shall be set in the stocks 2 hours; and all the penalties aforesaid shall be employed to the use of the poor of the parish, saving that it shall be lawful for any such justice, &c. out of the penalties to reward any person that shall inform, so as such reward exceed not the 3d part of the penalties: Provided that nothing in this act shall extend to the prohibiting of dressing meat in families, or dressing or selling meat in inns, cooks-shops, or victualling houses for such as otherwise cannot be provided, nor the crying or selling of milk or fish before ten in the morning, or after four in the afternoon, nor to the using of hackney coaches in or about the city of Dublin. Provided (s. 4.) that no person shall be prosecuted for any offence before mentioned, unless within 10 days after the offence committed. By s. 5 & 6. if any person who shall travel on the Lord's day shall be then robbed, no hundred shall be answerable: nevertheless the inhabitants of the counties, hundreds, or baronies, after the notice of any such robbery, or after hue and cry brought, shall make fresh pursuit after the offenders with horsemen and footmen, according to the 10 & 11 Car. 1. c. 13. Ir. upon pain of forfeiting to the king as much money as might have been recovered against the hundred or barony if this law had not been made. And this act further provides (s. 8.) that no keeper of any tavern, alehouse, or public victualling house, shall receive or permit to remain in his house, any person during the time of divine service, except those who are of their own family, or lodgers in said house; or furnish them with liquor of any sort; upon pain of forfeiting 10s. to be paid by such keeper of a tavern; and also the sum of 5s. to be forfeited by every person who shall enter or remain in such tavern contrary to this act. And by s. 9. all constables and church-wardens of parishes within cities and towns corporate, are required frequently, and as often as they have reasonable

Proviso,

s. 4.

Limitation,

s. 5. & 6.

Hundred not answerable to travellers on Sunday.

s. 8.

Penalty on tavern-keepers, &c. furnishing liquors during divine service on Sunday.

Penalties on those resorting to taverns, &c. at such time.

s. 9.

Duties of constables and churchwardens,

reasonable

reasonable cause so to do, to enter all taverns, &c. within their districts, and to apprehend such persons as they shall find, or reasonably suspect, to be offenders against this act, and also the master or keeper of such house, and to carry them before the next or some other justice of peace near the place where such person shall be apprehended; which justices are to examine witnesses upon oath, and their conviction or acquittal shall be final; and if such justice shall convict the person accused, he shall forthwith demand the said penalties, and *Penalties how recovered, &c.* in default of payment commit the offender to the gaol of the county, till he shall have made payment of the same; which sum so paid shall be applied to the use of the poor of the parish. Provided (s. 10.) that nothing herein shall extend to persons who have been in any inn before the Lord's day, and design to abide there on Sunday. *s. 10. Proviso.*

By the 21 Geo. 3. c. 49. Eng. any house, room, or other place, opened or used for public entertainment or amusement, or for publicly debating on any subject, upon any part of the Lord's day, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper shall forfeit £200. for every day that such house, &c. shall be opened or used, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses; and the person managing such entertainment, &c. or acting as master of the ceremonies there, or as moderator, president, or chairman of any public debate, shall likewise forfeit £100. to such person as will sue for the same; and every doorkeeper, servant, or other person, who shall collect or receive any money or tickets from persons assembling at such house, &c. on the Lord's day, or who shall deliver out tickets for admitting persons to such house on the Lord's day, shall also forfeit £50. to such person as will sue for the same. And by s. 2. any person who shall behave as master or mistress, or as the person having the care, government, or management of such house, &c. shall be deemed the keeper, and shall *Penalty for opening certain houses of amusement on a Sunday. 21 Geo. 3. c. 49. s. 1. Eng. What persons liable to penalties. s. 2. Who to be deemed owners of such houses.*

be

What houses intended by this act.

Penalty on advertising such public amusements for Sunday, or printing such advertisements.

*s. 4.
Penalties how recovered.*

*s. 5.
Limitation.*

*s. 6.
Pleading.*

be liable to be sued, and punished as such, notwithstanding he or she be not the real owner or keeper thereof; and whenever any such house, &c. shall belong to or be kept by divers persons in partnership, each shall be deemed the keeper thereof, and shall be liable to be sued and punished as such; and any house, &c. at which persons shall be supplied with tea, coffee, or any other refreshments of eating or drinking on the Lord's day, at any other prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, &c. or at coffee-houses, or other houses where the same are usually sold, shall be deemed a house, &c. to which persons are admitted by the payment of money, although money be not there taken in the name of or for admittance, or at the time when persons enter into or depart from such house, &c.; and any house, &c. which shall be opened or used for any public entertainment or amusement, or for public debate, on the Lord's day, at the expense of any number of subscribers, and to which persons shall be admitted by tickets to which subscribers shall be entitled, shall be deemed a house, &c. to which persons are to be admitted by the payment of money. By s. 3. any person advertising any public entertainment or amusement, or any public meeting for debating on the Lord's day, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement, shall forfeit £50. for every offence, to any person who will sue. By s. 4. any person entitled to the forfeitures, may sue by action of debt in any court of record at Westminster, in which it shall be sufficient for the court to declare, that the defendant is indebted to the plaintiff in the sum of —, being forfeited by an act made in the 21st year of the reign of his majesty king George the third, intituled "An act for preventing certain abuses and profanations on the Lord's day called Sunday;" and the plaintiff if he recover shall have full costs. By s. 5. no action shall be brought for the penalties, unless brought within 6 months after the offence. By s. 6. if any action be brought for any thing done in execution of this act, the defendant may plead the

the general issue, and shall have treble costs of verdict, nonsuit, or judgment. By s. 7. the ecclesiastical jurisdiction shall not be altered or abridged. And by s. 8. nothing in this act shall take away, alter, or abridge any of the liberties or immunities to which protestant subjects are entitled under the toleration act 1 W. & M. st. 1. c. 18.

s. 7.
Proviso.

s. 8.
Saving for the toleration act.

It may be proper here to refer to the following statutes appointing certain anniversaries to be kept holy. By

Anniversary of the discovery of Gunpowder Plot to be kept holy.

the 3 Jac 1. c. 1. s. 2. Eng. all ministers in every church, or other usual place for common prayer, shall always

3 Jac. 1. c. 1.
s. 2. Eng.

upon the 5th day of November, (the day of the intended execution of Gun-powder Plot,) say morning prayer, and give God thanks; and all persons shall upon that day resort to the parish church or chapel accustomed, or to some usual church or chapel where the service of God shall be used, and there abide during the time of service. And by s. 3. every minister shall give warning to his parishioners at morning prayer, the Sunday before every 5th of November, for the due observation of the said day; and after morning prayer or preaching upon the 5th of November, they shall read publicly this act. The

s. 3.

12 Car. 2. c. 14. Eng (which is confirmed by the 13 Car. 2. c. 11. Eng.) also enacts, that all ministers in every church,

12 Car. 2. c. 14.
Eng.

and other usual place of divine service, shall annually celebrate the 29th day of May, (the anniversary of the restoration of king Charles the II.) by rendering thanksgivings unto Almighty God: and all persons shall upon the said day resort with devotion to some usual church or place where public thanksgivings shall be rendered, and there abide during the service of God. And by

13 Car. 2. c. 11.
Eng.

s. 2. every minister shall give notice to his parishioners in the church, at morning prayer, the Lord's day before such 29th of May, for the due observation of the said day, and shall then read this act. And by the 12 Car. 2.

Anniversary of the restoration.

s. 2.

c. 30. Eng. every 30th day of January, (the day of the execution of king Charles I.) unless it be the Lord's day, and then the day following, shall be ever set apart to be kept in all churches and chapels, as an anniversary day of fasting and humiliation. The 14 & 15

12 Car. 2. c. 30.
Eng.

Anniversary of humiliation on the day of the execution of king Charles I.

14 & 15 Car. 2.
st. 4. c. 1. 1r.

Car 2. st. 4. c. 1. Ir. in a similar manner to the 12 Car. 2.

Anniversary of the restoration.

c. 14. in Ireland.

14 & 15 Car. 2.
st. 4. c. 23. Ir.

*Anniversary of
the Irish rebel-
lion.*

s. 2.

7 W. 3. c. 14.
Ir.

§ 14.

*Penalty of ale-
house-keeper
permitting un-
lawful drinking
in his house.*

1 Jac. 1. c. 9.
s. 1. Eng.

* This clause is
done away by
the 1 Car. 1. c. 4.
s. 1. Eng.

s. 3.

*Penalty how le-
vied.*

c 14. Eng. *supra* provides, that the 29th of May shall be kept holy, and that all persons shall on that day forbear all bodily labour, and the exercise of their trades. And by the 14 & 15 Car. 2. st. 4. c. 23. Ir. the 23d day of October shall be kept as an anniversary holiday, and all persons shall at that day forbear all bodily labour, and the exercise of their trades; and all ministers in every usual place for common prayer, shall upon said day, give thanks to God for the happy deliverance from the conspiracy for cutting off the protestants and the English throughout the kingdom on that day; and every person shall resort to some usual church or chapel where the service of God shall be used, and there abide during the time of service. And by s. 2. every minister shall give warning to his parishioners, at morning prayer, the Lord's day next before every 23d of October, for the due observation of that day. And the 7 W. 3. c. 14. Ir. (*ante* p. 449.) includes the 5th day of November, and 30th day of January, amongst those appointed to be kept holy.

XIV. Next as to the crime of *drunkenness*: By the 1 Jac. 1. c. 9. Eng. if any innkeeper, victualler, or alehouse-keeper, permit any person [*dwelling in any city, town corporate, market-town, village or hamlet, where such inn, &c. is] to remain drinking or tippling in the said inn, other than such as shall be invited by any traveller, and shall accompany him only during his abode there, and other than labouring and handicraftsmen in cities and towns corporate, and market-towns, upon the usual working days, for one hour at dinner time, to take their diet in an alehouse, and other than labourers and workmen, which for the following of their work by the day, or by the great, in any city, &c. shall for the time of their continuing in work there, lodge in any inn, &c. other than for urgent occasions, to be allowed by 2 justices: every such innkeeper, &c. shall forfeit 10s. to the poor; the offence being viewed by any mayor, bailiff, or justice, or proved by the oath of 2 witnesses before any mayor, &c. And by s. 3. the said penalties shall be levied by the constables or church-wardens, by distress; and for default of satisfaction

fection within 6 days, the same to be appraised and sold, &c: and for want of sufficient distress the party offending to be by the mayor, &c. committed to the common gaol until paid. By s. 4. if the constables or church-wardens do not levy the penalties, or in default of distress neglect to certify the same for 20 days to the mayor, &c. within whose jurisdiction the offence is committed, they shall forfeit 40s. to the poor, to be levied by distress, by warrant from one justice, mayor, &c. to be detained for 6 days; within which time, if payment be not made, the goods to be appraised and sold, &c: and for want of distress, the constables or church-wardens offending to be by the mayor, &c. committed to the common gaol until the penalty be paid: for all which penalties levied by the constables, &c. they shall be accountable to their successors and parishioners as in other church reckonings. And for all forfeitures, for any neglect of the constables or church-wardens, those shall be accountable who levy or receive the same. By s. 6. the correction of such as shall offend within the universities, shall be by the principal officers of the same universities to whom the administration of justice doth belong. And by the 4 Jac. 1. c. 5. Eng. every person who shall be drunk, shall forfeit 5s. to be paid, within one week after conviction, to the church-wardens, who shall be accountable to the poor: And if he neglect to pay the forfeiture, the same shall be levied by warrant from the court, judge or justices, before whom the conviction shall be. And if not able to pay, he shall be committed to the stocks, there to remain 6 hours. By s. 3. if any constable, or other inferior officer, do neglect the correction of the offender, or the levying of the penalties, he shall forfeit 10s. to the poor, to be levied by any other person having warrant from any mayor, bailiff, head officer, justice of peace, or court where such conviction shall be, and to be paid to the church-wardens, who are to account for the same. By s. 4. if any person shall remain drinking or tippling in any inn, victualling house, or ale-house, [*in the same city wherein he doth dwell] and the same being viewed by any mayor, &c. or proved as limited by the 2 Jac. 1. c. 9. *supra*, he shall

s. 4.

Penalties of constables or church-wardens omitting their duty.

s. 6.

*Proviso as to the universities.*4 Jac. 1. c. 5.
s. 1. & 2. Eng.*Penalty of persons convicted of drunkenness.*

s. 3.

Penalty of constable, &c. neglecting his duty

s. 4.

*Penalty for continuing drinking in an alehouse, &c.***Vide 21 Jac. 1. c. 7. s. 2. Eng. post.*

forfeit

*misprinted
"years."

s. 5.

Offences where
inquirable.

s. 6.

Persons convict-
ed a 2d time,
bound to good
behaviour.

s. 9.

One punishment
for one offence.

s. 11.

Limitation.

s. 7.

Constables, &c.
to present offen-
ces.

s. 8.

Proviso.

s. 10.

Proviso.

21 Jac. 1. c. 7.
s. 1. Eng.

What evidence
sufficient to con-
vict persons of
drunkenness.

s. 2.

He that stays
tippling in any
inn, &c. shall
incur the penal-
ty, &c.

s. 3.

Penalty for the
1st and 2d of-
fence.

forfeit 3s. 4d. to the poor, to be levied by distress as before. And if not able to pay, any mayor, &c. where such conviction shall be, may punish the offender in the stocks 4 [*hours]. By s. 5. the offences in this and the former act, shall be inquired of and presented before the justices of assize in their circuit, justices of peace in their sessions, and before mayors, bailiffs, or other head officers, who may inquire of trespasses, &c. and in every court-leet. By s. 6. any person once convicted of drunkenness, being again convicted, shall be bound with 2 sureties to the king, in one recognizance of £10. to be of good behaviour. By s. 9. any offender against this act once punished, shall not be punished for the same offence by any other ways. By s. 11. no person shall be molested for any offence against this statute, unless he be presented or indicted within 6 months after such offence. By s. 7. all constables, church-wardens, headboroughs, tithingmen, aleconners and sidemen, shall in their oaths incident to their offices, be charged to present offences contrary to this statute. By s. 8. this act shall not restrain ecclesiastical jurisdiction. Nor by s. 10. be prejudicial to the 2 universities. These acts (1 Jac. 1. c. 9. and 4 Jac. 1. c. 5.) are continued for ever by the 21 Jac. 1. c. 7. s. 1. Eng. which further provides, that the proof of one witness shall be sufficient, and the confession (before persons authorized to minister the oath) of any person offending, shall suffice to convict the party offending; and after confession the oath of the party offending shall be sufficient proof against any other offending at the same time. By s. 2. if any person wheresoever his habitation be, shall be found, upon view, or confession, or proof of one witness, to be tippling in any inn, alehouse, &c. he shall be within the statutes, and incur the penalty: and the confession of such persons shall convict themselves, and their oath shall be sufficient proof against any other offending at that time. By s. 3. any justice of peace in any county, or head officer in any city or town corporate, may convict any person of drunkenness, whereby such person shall forfeit 5s. and for the 2nd offence he shall become bound to good

good behaviour. By s. 4.* any alehouse keeper convict against either of the two said statutes, or against this, shall for 3 years be disabled to keep any alehouse. By s. 5. the oath of constables, &c. prescribed by the 4 Jac. 1. c. 5. s. 7. *supra*, shall be enlarged to present all offences contrary to the 1 Jac. 1. c. 9. with the alterations in this act contained. By the 1 Car. 1. c. 4. s. 2. Eng. keepers of taverns, and such as do sell wines in their houses, and do also keep inns or victualling in their houses, shall be within the 2 Jac. 1. c. 9. and 4 Jac. 1. c. 5. *supra*. No statute has been made in Ireland providing for the punishment of the crime of drunkenness. The statutes which require alehouse-keepers to obtain licenses from the justices of peace, and commissioners of excise, for selling ale and other exciseable liquors, do not fall within the scope of this work.

s. 4.

Alehouse-keeper
offending dis-
abled, &c. for 3
years.

s. 5.

Oath of consta-
bles, &c. en-
larged.1 Car. 1. c. 4.
s. 2. Eng.Vintners and
victuallers to be
within the sta-
tutes.

§ 15. With respect to the offence of open and no-
torious *lewdness*, I have only to refer to the statutes al-
ready mentioned, *ante* vol. 1. p. 415.

§ 13.

CHAP. II.

Of Offences against the Law of Nations.

IT is one of the provisions of the Great Charter (9 Hen. 3. c. 30. E. & I.) that all merchants shall have safe con-
duct to depart, to come, to tarry in and go through
England, to buy and sell without evil tolls by the old
customs, except in time of war; and if they be of a land
making war, and be found in the realm at the beginning
of the wars, they shall be attached without harm of body
or goods, until it be known how our merchants be treated
in the land making war; and if our merchants be well
treated there, theirs shall be likewise with us. And the
2 Edw. 3. c. 9. E. & I. 14 Edw. 3. st. 2. c. 2. E. & I. *Anc.*
25 Edw. 3. c. 2. E. & I. *con* *firming* *their*
privileges.

§ 1.

Merchant stran-
gers to have safe
conduct, &c.9 Hen. 3. c. 30.
E. & I.

* The 7 Jac. 1. c. 10. Eng. contains a similar provision.

25 Edw. 3. st. 4. c. 2. E. & I. 27 Edw. 3. st. 2. c. 2. E. & I. 5 Ric. 2. st. 2. c. 1. E. & I. and 14 Ric. 2. c. 9. E. & I. contain similar provisions for the protection of foreign merchants, or declaratory of their right to trade without interruption, paying the customs. And by the 27 Edw. 3. st. 2. c. 20. E. & I. if any outrage or grievance be done to merchants-strangers in the country out of the staple, the justices of the place shall do speedy justice to them, after the law-merchant, from day to day, and from hour to hour, without driving them to sue at the common law; and if any be convict that he hath grieved the merchants, he shall be punished for the contempt, in as much as shall be adjudged to the merchants for their damages; and to the merchants-strangers their double damages shall be adjudged. And by the 27 Edw. 3. st. 2. c. 17. E. & I. no merchant stranger shall be impeached for another's trespass or debt, whereof he is not debtor, pledge, or mainpernor; provided that if the liege people, merchants or other, be endamaged by any lords of strange lands, or their subjects, and the said lords, being duly required, fail of doing right, the king shall have the law of marque and reprisal; and in case any debate arise with lords of strange lands, the people and merchants of the said lands shall not be suddenly treated as enemies, but warned, and proclamation published, that they quit the realm within 40 days after the proclamation; and in case that for evident cause they cannot avoid the realm within so short a time, they shall have other 40 days.* And by the 28 Edw. 3. c. 13. s. 3 E. & I. no ship shall be compelled to come to any port of England, nor to abide against the will of the master, or of the merchants whose the goods be. And if such ships come of their good will, or be driven by misfortune to any port in England, and the masters or merchants will sell part of their merchandizes, it shall be lawful for every man to buy such merchandizes, albeit the same be not put to land to sell; so that no merchant nor other go to meet such ships to forestall the merchandizes, and that

27 Edw. 3. st. 2. c. 20. E. & I.

Justice to be done to them according to the law-merchant.

27 Edw. 3. st. 2. c. 17. E. & I.

Not to be impeached for other debts.

Law of marque.

Those of enemies countries to have time to depart, &c.

28 Edw. 3. c. 13. s. 3. E. & I.

No foreigner's ships to be forced into an English port, &c.

* These are clauses of the statute of the staple.

that the masters and merchants, after they have sold that which pleaseth them, and paid the custom, may freely depart. And none shall disturb any ship to come to any port of England, but to the port where the masters and merchants will of their free will arrive, nor shall meddle with the sale of the merchandizes, nor disturb the merchants; and if any make disturbance, he shall incur a grievous forfeiture to the king. The 9 Edw. 3. st. 1. c. 1. E. & I. 38 Edw. 3. st. 1. c. 2. E. & I. 2 Ric. 2. st. 1. c. 1. E. & I. 11 Ric. 2. c. 7. E. & I. 14 Ric. 2. c. 1. E. & I. 4 Hen. 4. c. 15. E. & I. 5 Hen. 4. c. 9. E. & I. 6 Hen. 4. c. 4. E. & I. 7 Hen. 4. c. 9. E. & I. 4 Hen. 5. c. 5. E. & I. 3 Hen. 7. c. 8. E. & I. and 4 Hen. 7. c. 23. E. & I. which imposed certain restrictions upon the trading of and with merchants-strangers appear to be obsolete. By the 15 Hen. 6. c. 3. E. & I. the keepers of the great and privy seal shall not suffer the clause, *vidimus*, to be put in any safe conduct, unless some great cause move the king to grant the same in such wise; and in all safe conducts to be granted to any persons, the names of them, of the ships and of the masters, and the number of the mariners, with the portage of the ship, shall be expressed. And by the 18 Hen. 6. c. 8. E. & I. merchants aliens may load ships of parts adversaries and enemies of the king, if the masters or merchants of such ships have letters patent of the king of his safe conduct, making mention of the name of the ships, and of the master; and if any such ships charged with such merchandizes of such merchants be taken upon the sea by the king's people, not having the king's letters patent on board of such ships, at the day of the taking, nor that such letters patent be in the chancery inrolled, the takers may enjoy the same. And by the 20 Hen. 6. c. 1. s. 2. E. & I. all letters of safe conduct to be granted to the king's enemies, or other, shall be inrolled in chancery before such letters be delivered, and all letters of safe conduct not inrolled before delivery, shall be void. By s. 3. if any goods be taken by the subjects of the king upon the sea, charged in any ship belonging to enemies, not having letters of safe conduct inrolled, they that take the goods shall them enjoy.

And

15 Hen. 6. c. 3.
E. & I.

Letters of safe
conduct to be in
what form, &c.

18 Hen. 6. c. 8.
E. & I.

Letters of safe
conduct to be
inrolled.

20 Hen. 6. c. 1.
s. 2 & 3. E. & I.

Prizes of goods
not to be restored
unless letters of
safe conduct in-
rolled.

s. 4.

*Proviso.*31 Hen. 6. c. 4.
E. & I.*Remedy for him
who having a
safe conduct is
robbed upon the
sea.*14 Edw. 4. c. 4.
E. & I.*Statutes con-
firmed.*

And by s. 4. the subjects taking such ships, not having letters of safe conduct in the same ships, and bringing them within the realm, shall not be endamaged for such taking, if they be ready to make restitution within reasonable time after knowledge is made to them of the letters of safe conduct inrolled in chancery before the taking. By the 31 Hen. 6. c. 4. E. & I. if any subjects attempt to offend upon the sea, or in any port under the king's obeisance, against any strangers in amity, league, or truce, or by safe conduct, and specially in attaching of any such strange person, robbing of him, his ship, or goods, or against any of his liege people, the chancellor (as well for the deliverance of any such person, as for restitution of ship or goods) shall have authority, calling to him any of the justices, upon bills of complaint to make process out of the chancery, as well against such offenders, as against any other persons to whose hands such person, ship, or goods, shall come, as for deliverance and restitution of the same person, ship, and goods, and further to proceed to make the strangers grieved to have full deliverance and restitution, and also their costs and losses. And by the 14 Edw. 4. c. 4. E. & I. all statutes against the breakers of truces and safe conducts, except the 2 Hen. 5. st. 1. c. 6. E. & I. are confirmed.

The several prize acts which have been from time to time passed, contain divers provisions in respect to granting letters of marque, and prohibiting the ransoming of ships taken by the enemy, or of prizes taken by his majesty's ships, &c. The last of these acts is the 45 Geo. 3. c. 72. U. K. which has operation only during the present war.

§ 2.

*Violation of the
rights of ambas-
sadors, how pun-
ished.*7 Ann. c. 12.
s. 4. Eng.

II. The 7 Ann. c. 12. Eng. which has been already in part stated, further provides (s. 4.) that any person who shall sue forth or prosecute any writ or process, whereby the person of any ambassador, or public minister of any foreign prince or state, authorized and received as such by the crown, or the domestic, or domestic servant of such ambassador, &c. may be arrested or imprisoned, or his goods distrained, seized, or attached, and all attor-
nies

nies and solicitors prosecuting and soliciting in such case, and all officers executing any such writ, &c. being thereof convicted by the confession of the party, or by the oath of one credible witness, before the lord chancellor, and the chief justices of the courts of K. B. and C. B. or any 2 of them, shall be deemed violators of the laws of nations, and disturbers of the public repose, and shall suffer such pains, penalties, and corporal punishments, as the said lord chancellor and chief justices, or any 2 of them, shall judge fit. But by s. 5, no person shall be proceeded against as having arrested the servant of any ambassador, &c. unless the name of such servant shall be first registered in the office of one of the principal secretaries of state, and by such secretary transmitted to the sheriffs of London and Middlesex, or their under-sheriffs or deputies, to be hung up by them in some public place in their offices.

s. 5.

Proviso as to the registry of servants.

III. Next as to the crime of piracy. The 28 Hen. 8. c. 15. Eng. enacts (s. 3.) that for treasons, robberies, felonies, murders, and confederacies, done upon the seas, or in any haven, river, creek, or place, where the admirals have or pretend to have power or jurisdiction, the offenders shall not have the benefit of clergy. But by s. 4. this act shall not extend to any person for taking victuals, cables, ropes, anchors, or sails, which such person, compelled by necessity, taketh of any ship which may spare the same; so as the person pay for the same, money, or money-worth, or deliver a bill obligatory to be paid, viz. if the taking be on this side the straits of Marroke, to be paid within 4 months, and if it be beyond the said straits, to be paid within 12 months; and that the makers of such bills pay the same at the day limited. And the 11 & 12 W. 3. c. 7. s. 9. Eng. as amended by the 4 Geo. 1. c. 11. s. 9. Eng.* enacts that if any commander of any ship, or any mariner, shall, in any place where the admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with the ship,

§ 3.

Benefit of clergy excluded from certain marine felonies.

28 Hen. 8. c. 15. s. 3. Eng.

s. 4.

Taking victuals, &c. under certain circumstances, not piracy.

11 & 12 W. 3. c. 7. s. 9. Eng.

(4 Geo. 1. c. 11. s. 9. Eng.)

Certain offences declared to be piracies and capital offences.

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ship,

* The 4 Geo. 1. c. 11. Eng. which takes away the benefit of clergy, is declared not to extend to Scotland.

ship, or any boat, ordnance, ammunition, or goods, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, &c. or consult or confederate with, or attempt to corrupt, any commander, officer, or mariner, to yield up or run away with any ship or goods, or turn pirate, or go over to pirates, or if any person shall lay violent hands on his commander, to hinder him from fighting in defence of his ship and goods, or confine his master, or endeavour to make a revolt in the ship, he shall be adjudged a pirate, felon, and robber, and being convicted according to this act, or the 28 Hen. 8. c. 15. Eng. shall suffer death, and loss of lands and goods, without benefit of clergy. And by s. 10. (as amended by the 8 Geo. 1. c. 24. s. 3. Eng.) all persons who shall either on land or upon the seas, knowingly set forth any pirate, or aid, assist or maintain, procure, command, counsel, or advise, any person to commit any piracies or robberies upon the seas, and such person shall thereupon commit any such piracy or robbery, shall be adjudged principal pirates; and after any piracy or robbery committed, every person who, knowing that such pirate or robber has committed such robbery, shall, on the land or on the seas, receive, entertain, or conceal any such pirate or robber, or receive any ship or goods by such pirate or robber piratically and feloniously taken, shall be adjudged a principal pirate. By s. 11. when any English ship shall have been defended against pirates, enemies, or sea rovers, by fight, and brought to her port, in which fight any of the officers or seamen shall have been killed or wounded, it shall be lawful for the judge of his majesty's high court of admiralty, or his surrogate in the port of London, or the mayor, bailiff, or chief officer, in the several out-ports of this kingdom, upon petition of the master or seamen of such ship, to call unto him 4 or more substantial merchants, and such as are no adventurers or owners of the ship or goods, and have no interest therein, and by advice with them to raise upon the adventurers and owners of the ship and goods, by process out of the said court, such sums of money as himself and

s. 10.

(8 Geo. 1. c. 24. s. 3. Eng.)

Persons aiding, &c. to be adjudged principals.

s. 11.

Encouragement to officers, &c. to defend their ships against pirates.

and the said merchants, by plurality of voices, shall judge reasonable, not exceeding 2 *per cent.* of the freight, and of the ship and goods, according to the first costs of the goods; which money shall be distributed amongst the captain, masters, officers, and seamen of the ship, or widows and children of the slain, according to the direction of the judge of said court, &c. with the approbation of the merchants aforesaid; who shall proportion the same to the ship's company, having special regard to the women and children of such as shall have been slain, and such as have been wounded. And by s. 12. a reward of £10. for every vessel of 100 tuns or under, and £15. for every ship of a greater burden, shall be paid by the commander of every ship, wherein any combination shall be set on foot, for the running away with, or destroying such ship, or the goods therein, to such person as shall first make a discovery thereof; the same to be paid at the port where the wages of the seamen are to be paid. By s. 17. all officers or sailors who shall desert the ships wherein they are hired to serve for that voyage, shall forfeit all wages due to them. And by s. 18. in case any master of a merchant ship shall, during his being abroad, force any man on shore, or wilfully leave him behind in any of his majesty's plantations, or elsewhere, or shall refuse to bring home with him all such of the men which he carried out, as are in a condition to return, such master shall suffer 3 months imprisonment. The 8 Geo. 1. c. 24. further provides (s. 1.) that if any commander of any ship, or other person, shall trade with any pirate, or shall furnish any pirate, felon, or robber on the seas, with ammunition, provision or stores, or shall fit out any ship knowingly and with design to trade or correspond with any pirate, &c. or if any person shall consult, combine, or correspond with any pirate, &c. knowing him to be guilty of any piracy, felony, or robbery, such offender shall be guilty of piracy, &c. and shall be tried according to the statutes 28 Hen. 8. c. 15. and 11 & 12 W. 3. c. 7. and being convicted shall suffer death, and loss of lands and goods. And if any person belonging to any ship, upon meeting

s. 12.

Reward to discoverer of combination for running away with ship.

s. 17.

Seamen deserting merchant-ships to lose their wages.

s. 18.

Penalty on master, &c. leaving seaman behind.

8 Geo. 1. c. 24.
s. 1. Eng.

Trading with pirates, &c. and other such offences made piracy.

s. 4.
Offenders exclu-
ded benefit of
clergy.

s. 2.
Ship, &c. fitted
out to trade with
pirates, forfeit-
ed.

s. 5.
Seamen maimed
in fight against
pirates, reward-
ed.

s. 6.
Penalty of mas-
ters, &c. not
defending their
ships, &c.

s. 7.
Penalty of mas-
ters advancing
to any seaman
above half his
wages while be-
yond sea.

any merchant ship on the high seas, or in any port, haven, or creek, shall forcibly board and enter such ship, and though they do not seize and carry her off, shall throw over-board or destroy any of the goods, they shall be punished as pirates. And by s. 4. every offender convicted of any piracy, felony, or robbery, by virtue of this act, shall not have benefit of clergy. And by s. 2. every ship fitted out with a design to trade or correspond with any pirate, and all merchandizes put on board the same with an intention to trade with any pirate, &c. shall be forfeited, one moiety to the king, the other to the first discoverer of such design, who may sue for the ship, &c. in the high court of admiralty. By s. 5. if any seaman on board of any merchant ship, shall be maimed in fight against any pirate, he shall not only receive the rewards appointed by the 22 & 23 Car. 2. c. 11. Eng.* but shall be provided for in Greenwich hospital, preferable to any other seaman who is disabled from service by age. By s. 6. if any commander or other officer, or seaman, of a merchant ship which carries guns and arms, shall not, when they are attacked by any pirate, fight and endeavour to defend themselves, or shall utter any words to discourage the other mariners, and by reason thereof the ship shall fall into the hands of the pirate, every such commander, &c. shall forfeit all the wages due to him, to the owners of the ship, and shall suffer 6 months imprisonment. By s. 7. no master or owner of any merchant ship shall pay to any seaman beyond the seas, any money or effects on account of wages, exceeding one moiety of the wages due at the time of such payment, till

+ Viz. Such sum of money as the judge of the admiralty, or his surrogate, or the judge of the vice admiralty within which the ship shall arrive, with the major part of the adventurers and owners, (who shall be present when called on by such judge) shall judge reasonable, not exceeding 2 per cent of the ship and goods, according to the first cost of the goods by the invoice, (which the owner or factor is to produce) or by the oath of the owner, or his correspondent: which money shall be paid to the register of the court, (who shall receive 3d in each pound,) thence to be distributed amongst the captain, master, officers and seamen of said ship, or widows and children of the slain, by the judge of the court, with the approbation of 2 or more of the owners or adventurers.

till such ship shall return to Great Britain, Ireland, or the plantations, or to some other of his majesty's dominions whereunto they belong; on forfeiture of double the money so paid, to be recovered in the high court of admiralty, by any person who shall first inform for the same: By s. 10. this act shall extend to the king's dominions in Asia, Africa, and America. By the 18 Geo. 2. c. 30. s. 1. Eng.* all persons being natural born subjects or denizens, who during any war shall commit any hostilities upon the sea, or in any place where the admirals have jurisdiction, against his majesty's subjects, under colour of any commission from any of his majesty's enemies, or shall be any other ways adherent to his majesty's enemies upon the sea, or where the admirals have jurisdiction, may be tried as pirates, felons, and robbers, in the court of admiralty, on ship-board, or upon the land, and being convicted shall suffer death, loss of lands and goods, as any other pirates ought by the 11 & 12 W. 3. c. 7. or any other act. By s. 2. any person tried and acquitted, or convicted, according to this act, shall not be liable to be prosecuted or tried again in Great Britain, or elsewhere, for the same fact, as high treason. Provided (s. 3.) that nothing in this act shall prevent any person guilty of any of the said crimes, who shall not be tried according to this act, from being tried for high treason within this realm, according to the 28 Hen. 8. c. 15. Eng. The 11, 12 & 13 Jac. 1. c. 2. Ir. contains clauses corresponding to those of the 28 Hen. 8. c. 15. Eng. (*ante* p. 465.) but the other English statutes relative to the offence of piracy, have not been adopted or followed in Ireland.

s. 10.

This act to extend to king's dominions.

18 Geo. 2.c.30. s. 1.Eng.

Giving aid to king's enemies at sea, piracy.

s. 2.

Proviso.

s. 3.

Proviso.

11,12&13Jac.1 c. 2. s. 3&4. Ir.

* The 11 & 12 W. 3. c. 7. Eng. contains a clause (s. 8.) similar to this.

CHAP. III.

Of High Treason.

Compassing the death of the king, &c. treason.

25 Edw. 3. st. 5. c. 2. E. & I.

36 Geo. 3. c. 7. s. 1. Eng.

Devising, &c. bodily harm or restraint of the king, or to depose him, or levying war to compel a change of measures, or moving an invasion, treason.

s. 5 & 6.

Persons how tried for these offences.

THE several kinds or classes of treason are defined by the 25 Edw. 3. st. 5. c. 2. E. & I. of which the first is: "when a man doth compass or imagine the death of the king, or of his wife, or of their eldest son and heir." To this branch of the statute of treason may be referred the 36 Geo. 3. c. 7. Eng. which enacts, that if any person during the natural life of the king, and until the end of the next session of parliament after a demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the king, or to deprive or depose him from the stile, honour, or kingly name, of the imperial crown of this realm, or of any other of his majesty's dominions or countries; or to levy war against the king within this realm, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both houses, or either house of parliament; or to move or stir any foreigner or stranger with force to invade this realm, or any other his majesty's dominions or countries under his obeisance; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed; being convicted thereof upon the oaths of 2 witnesses upon trial, or otherwise convicted or attainted by due course of law, such person shall be deemed and adjudged to be a traitor. And by s. 5. every person accused of any offence made treason by this act, shall be entitled to the benefit of the 7 W. 3. c. 3. Eng. and 7 Ann. c. 11. Eng. But by

by s. 6. this act shall not prevent any prosecution by information or indictment at common law, unless the party shall have been first prosecuted under this act.

II. The next species of treason mentioned in the 25 Edw. 3. is "if a man doth violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir." § 2.

Violating the queen, &c. treason.

25 Edw. 3. st. 5. c. 2. E. & I.

III. And a third class thereby defined is "if a man do levy war against our lord the king in his realm." The following Irish statutes which remain unrepealed, may be here stated. By the 18 Hen. 6. c. 2. Ir. such as shall put themselves into safe guard or comrick, or grant safe guard, &c. to thieves, robbers, and rebels, shall be adjudged traitors, and such safe guard, &c. shall be ad- § 3.

Levying war against the king, treason.

25 Edw. 3. st. 5. c. 2. E. & I.

18 Hen. 6. c. 2. Ir.

Comrick treason.

judged treason, unless it be granted by such as have authority by virtue of their office, or by special authority from the king upon pain of life and member. And by the 18 Hen. 6. c. 3. Ir. no lord nor other shall bring any people or horses to be upon the king's subjects, without their consents, but upon their own costs, and without doing hurt; and if any so do he shall be adjudged a traitor. The 10 Hen. 7. c. 3. Ir. recites and annuls a certain pretended prescription, whereby rebels, traitors, and others coming into Ireland, claimed to have supportation and free liberty during their abiding there; and enacts (s. 3.) that if any person shall support, maintain or receive any such rebel, the receptor or main- 18 Hen. 6. c. 3. Ir.

Quartering horse or foot on king's subjects, treason.

10 Hen. 7. c. 3. Ir.

Receiving rebels coming into Ireland, treason.

tainer, and the person so recepted, &c. shall be adjudged traitors. The 10 Hen. 7. c. 13. Ir. provides, that if any person shall procure or stir Irishry or Englishry to make war against the king's authority, viz. his lieutenant or deputy, or justice, or stir the Irishry to make war against the Englishry, he shall be deemed a traitor, as if such insurrection had been levied against the king's own person. It was also provided by the 13 Hen. 8. c. 1. Ir. that all wilful burning of recks of corn in fields and in towns, and burning of houses, of the king's sub- 10 Hen. 7. c. 13. Ir.

Stirring Irishry or Englishry to war, treason.

13 Hen. 8. c. 1. Ir.

Burning of corn and houses, treason. Qu

jects, should be high treason. But this act seems to be virtually repealed by the 43 Geo. 3. c. 58. U. K. which will be stated in another place. By the 28 Hen. 8. c. 7. 28 Hen. 8. c. 7. s. 1. Ir

Slandering the king, &c. or rebelliously detaining fortresses, &c. treason.

33 Hen. 8. st. 1. c. 1. s. 2. Ir.

Doing any thing to the peril of the king's person, or in derogation of his title, treason.

11 Eliz. st. 3. c. 1. Ir.

Arrogating the name of O'Neyle of Ulster, treason.

s. 1. Ir. if any person do maliciously wish, will, or desire, by words or writing, or by craft imagine, invent, practise, or attempt, any bodily harm to the king's person, the queen, or their heirs apparent, or to deprive them of the dignity, title, or name of their royal estates, or slanderously and maliciously publish and pronounce by express writing or words, that the king should be heretic, schismatic, tyrant, infidel, or usurper of the crown, or rebelliously keep or withhold from their sovereign lord, his heirs or successors, any of his fortresses, fortresses or holds, within this realm, or the king's dominions, or keep, &c. any of his or their ships, artillery, or other munitions or fortifications of war, and not deliver up to the king, &c. or such person as shall be deputed by him or them, such fortresses, &c. or munition, &c. within 6 days after he shall be commanded by the king, by proclamation under the great seal, such person, his aiders, counsellors, consentors, and abettors, shall be adjudged traitors. This statute was taken from the 26 Hen. 8. c. 13. Eng. which was repealed (amongst other statutes, creating new treasons) by the 1 Mar. 1. st. 1. c. 1. Eng. The 33 Hen. 8. st. 1. c. 1. Ir. also enacts, that if any person by writing or printing, or by exterior act or deed, maliciously procure or do any thing to the peril of the king's person, or whereby the king, his heirs or successors, may be disturbed or interrupted of the crown of Ireland, or of the name, stile, or title thereof, or by writing, &c. procure or do any thing to the prejudice, slander, disturbance, or derogation of the king, &c. whereby he or they may be disturbed, &c. in body, name, stile, or title to the crown of Ireland, &c. such person, his aiders, counsellors, maintainers, and abettors, shall be adjudged high traitors. And the 11 Eliz. st. 3. c. 1. Ir. which attainted Shane O'Neyle, and vested in the crown the country of Tyrone, and other countries and territories in Ulster, enacts (s. 2.) that to challenge, execute, or take the name of O'Neyle, or any superiority, dignity, jurisdiction, authority, tributes, &c. usurped or taken by any O'Neyle, of the lords, captains, or people of Ulster, shall be adjudged high treason. No

Irish

Irish statute has adopted the principle of the 1 Mar. st. 1. c. 1. Eng. in abolishing these new fangled treasons. And it is to be observed that upon the union with Scotland, it was provided by the 7 Ann. c. 21. Eng. 7 Ann. c. 21. s. 1. Eng. that no crimes or offences should be high treason or misprision of treason within Scotland, but those that are Same offences treason in England and Scotland. high treason or misprision of treason in England: and several offences which were theretofore treason in Scotland, are thereby made capital offences only. But since the union with Ireland, no statute has been passed to assimilate the law of England and Ireland in respect to the crime of treason.

IV. The 25 Edw. 3. also declares it to be treason, "if a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere. It is a provision of the 2 & 3 Ann. c. 20. s. 34. Eng.* §. 4. Adherence to the king's enemies, treason. 25 Edw. 3. st. 5. c. 2. E. & K. 2 & 3 Ann. c. 20. s. 34. Eng. Officer or soldier holding correspondence with the enemy beyond seas, guilty of high treason. that if any officer or soldier in her majesty's army, either upon land out of England, or upon the sea, hold correspondence with any rebel or enemy, or give them advice or intelligence, either by letters, messages, signs, or tokens, or any manner of way, or shall treat or enter into any condition with them, without her majesty's license, or license of the chief commander, he shall be guilty of high treason. And by s. 36. all treasons [and felonies] in this act, may be inquired of in the queen's bench, by lawful men of the county where the court shall sit, or before such commissioners, and in such county, as shall be assigned by the queen, and by lawful men of the same county. s. 36. Treasons, &c. where tried. And by s. 42. if any peer shall commit any of the offences aforesaid beyond the seas, and shall not have been there tried by martial law, and after his return into this realm shall be indicted of any offence hereby declared to be treason, [or felony], he shall have his trial by his peers. s. 42. Peers shall be tried by their peers. Provided (s. 40) that s. 40. Persons tried by a court martial not to be prosecuted again. if any person shall, in a court martial duly constituted, be tried and acquitted, or convicted, of any of the crimes herein

* Mr. Williams in his digest, makes a query whether this act is not expired: but Mr. East in his treatise on the pleas of the crown, states it as an existing law.

s. 43.

Trial how to be.

herein mentioned, such acquittal or conviction shall be a bar to any proceedings for the same offence. Provided (s. 43.) that every person who shall be prosecuted for any thing made treason by this act, shall be entitled to the benefit of the 7 W. 3. c. 3. Eng. But by the modern mutiny acts, any person holding correspondence with any rebel or enemy, &c. whether such offence shall be committed within the realm, or in any of the king's dominions, or in foreign parts, upon land or upon sea, shall suffer death, or such other punishment as by a court martial shall be awarded.

§ 5.

*Counterfeiting
the great or privy
seals, treason:*

25 Edw. 3. st. 5.
c. 2. E. & I.

1 Mar. st. 2. c. 6.
s. 2. Eng.

*Or sign manual
or privy signet.*

3 & 4 Ph. & M.
c. 11. Ir.

V. The fifth class or species of treason according to the 25 Edw. 3. is "if a man counterfeit the king's great or privy seal." And by the 1 Mar. st. 2. c. 6. s. 2. Eng. if any person falsely forge or counterfeit the queen's sign manual, privy signet, or privy seal, such offence shall be deemed high treason, and the offenders therein, their counsellors, procurers, aiders, and abettors, shall be adjudged traitors. No statute in Ireland provides against the offence of counterfeiting the king's sign manual, or privy signet; though the 3 & 4 Ph. & M. c. 11. Ir. provides, that in all cases of high treason [concerning the current coin, or] for counterfeiting the king's or queen's signet, privy seal, great seal, or sign manual, the trial shall be according to the common law.

§ 6.

*Counterfeiting
king's money
treason.*

25 Edw. 3. st. 5.
c. 2. E. & I.

1 Mar. st. 2.
c. 6. Eng.

*Treason to forge
foreign coin
current in the
realm.*

8 & 9 W. 3.
c. 26. s. 1. Eng.

*Making or
mending dyes,
&c. to stamp
current coin of
gold or silver,
treason.*

* These words
not in the
8 Ann. c. 6. Ir.

VI. It is also high treason by the 25 Edw. 3. "if a man counterfeit the king's money." And by the 1 Mar. st. 2. c. 6. Eng. if any person shall falsely forge and counterfeit any such kind of coin, of gold or silver, as is not the proper coin of this realm, and shall be current within this realm, it shall be deemed high treason; and such offenders, their counsellors, procurers, aiders, and abettors, shall be adjudged traitors. And by the 8 & 9 W. 3. c. 26. s. 1. Eng. no person, other than the persons employed in and for his majesty's mints, [*or authorized by the lord's commissioners of the treasury, or lord high treasurer of England,] shall knowingly make or mend, or begin to make or mend, or assist in the making, &c. of any puncheon, counter puncheon, matrix, stamp, dye, pattern, or mould of steel, or other metal, or of spaud, or fine founder's earth, or sand, or other materials, in which there

there shall be, or which will make or impress the figure or similitude of both or either of the sides or flats of any gold or silver coin, current within the kingdom: nor shall knowingly make, &c. any edger or edging tool, instrument, or engine, not of common use in any trade, but contrived for [*making] of money round the edges with letters, grainings, or other marks, resembling those on the edges of money coined in his majesty's mint, †nor any press for coinage, nor any cutting engine for cutting round blanks by a screw out of flatted bars of gold, silver, or other metal; nor shall knowingly buy or sell, or conceal, or without sufficient excuse knowingly have in his custody, any such puncheon, &c. or other tool or instrument before mentioned; and if any persons shall offend in the matters aforesaid, such offenders, their counsellors, procurers, aiders, and abettors, shall be guilty of high treason. And by s. 2. if any person shall without authority, knowingly convey, or assist in conveying, out of his majesty's mint, any puncheon, &c. or other instrument used about the coining of monies there, or any useful part of such instruments, ‡ as well the persons offending, their counsellors, &c. as also all persons knowingly receiving or concealing the same, shall be guilty of high treason. By s. 3. if any person, other than those employed in his majesty's mints, [§or such as shall have authority from the treasury,] shall mark on the edges any the current coin of this kingdom, † or if any person shall mark on the edges any diminished or counterfeit coin, with letters or grainings or other marks like those on the edges of money coined in his majesty's mints, † such offence shall be high treason, and the offender, his counsellors, &c. shall suffer death as in cases of high treason. By s. 4. if any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling

*A misprint for "marking". 222

Or knowingly to buy, conceal, or have them.

s. 2.

Treason to convey puncheons, &c. out of the mint.

s. 3.

Treason to mark the edges of counterfeit coin.

§ "These words not in 8 Ann. c. 6. Ir.

s. 4.

Or to colour, &c. any coin resembling the current coin.

† "Or other coin made or to be made current within this kingdom by proclamation," here added in 8 Ann. c. 6. Ir.

‡ "Or wittingly or knowingly import or bring into this kingdom any of them without lawful authority," here added in 8 Ann. c. 6. Ir.

† "or other figured" in 8 Ann. c. 6. rr.

‡ "Great Britain" in 8 Ann. c. 6. lr.

s. 5.

Puncheons, &c. may be seized, and they, or counterfeit money, &c. after being given in evidence, to be destroyed.

s. 7.

Attainder not to work corruption of blood.

s. 9.

Limitation.

1 Ann. st. 1. c. 9. s. 2. Eng.
7 Ann. c. 25. s. 2. Eng.

resembling [*the current coin of this kingdom,] or any [†round] blanks of base metal, or of coarse gold or silver, of a fit size and figure to be coined into counterfeit milled money resembling the gold or silver coin of [‡this kingdom,] or shall gild over any silver blanks of a fit size, &c. to be coined into pieces resembling the current gold coin of this kingdom, such person, his counsellors, &c. shall be guilty of high treason. By s. 5. if any puncheon, &c. or other tool, instrument, or engine for coining or counterfeiting gold or silver monies, or any part of such tool, &c. shall be concealed in any place, or found in the house or custody of any person not employed in coining in his majesty's mints, nor having the same, by lawful authority, any person discovering the same shall seize and carry them to some justice of peace of the county where the same shall be seized, &c. to be produced in evidence against any person who shall be prosecuted for such offence; and after they shall be produced in evidence, they shall by order of court, or in the presence of some justice of peace, in case there be no trial, be destroyed; and if any counterfeit or diminished money shall be produced in any court of justice in evidence, then, immediately after, the judges shall cause such monies to be cut in pieces in court, or in the presence of some justice of peace, and then to be delivered to or for such person to whom the same shall appertain. By s. 7. this act shall not make any corruption of blood, or make the wife of any offender lose her dower; and persons accused of offences made treason [§or felony] by this act, shall be tried by such evidence, and in such manner, as any offenders for counterfeiting the king's money. And by s. 9. no prosecution shall be made for any offence against this act, unless commenced within 3 months: || But by the 1 Ann. st. 1. c. 9. s. 2. Eng. (which is re-enacted by the 7 Ann. c. 25. Eng.) the prosecution of such as offend against the 8 & 9 W. 3. *supra*, by

* "Her majesty's coin, or foreign coin made current in this kingdom by proclamation." are the words in 8 Ann. c. 6. lr.

† These words refer to s. 6. which will be stated in another place.

|| The limitation is 6 months by the 8 Ann. c. 6. lr.

by making or mending, or beginning to make or mend any coining tool or instrument therein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within 6 months after such offence committed. The 8 Ann. c. 6. Ir. has followed the 8 & 9 W. 3. c. 26. *supra*, with such deviations as are noted in the margin. But the 1 Mar. st. 2. c. 6. Eng. *supra*, has not been adopted in Ireland, save so far as the 8 Ann. c. 6. Ir. may have incorporated it. And this statute (8 Ann. c. 6. Ir.) further provides (s. 10.) with relation to foreign coin, that the printed proclamation ordering and declaring the currency of foreign coin, and ascertaining the rates and value of such foreign coin in this kingdom, shall be evidence in all courts of justice of the currency of such coin, and that the same is intended to be preserved by this act from being counterfeited, as if the original proclamation under the great seal of this kingdom were produced. Provided (s. 11.) that the clerk of the council, or his deputy, do certify under his hand and seal, on the back of such proclamation, that the original proclamation, &c. agrees, *verbatim*, with the printed proclamation, whereon he writes such certificate; which proclamations and certificates thereon indorsed, the clerk of the council, &c. shall send, from time to time, to the respective clerks of the crown, without fee.

Limitation for certain prosecutions.

8 Ann. c. 6. Ir.

s. 10.

Printed proclamation, evidence of currency of coin.

s. 11.

Proclamation to be certified, &c.

It is further provided by the 15 Geo. 2. c. 28. s. 1. Eng. that if any person shall wash, gild, or colour any of the lawful silver coin called a shilling, or a sixpence, or any counterfeit shilling or sixpence, or add to or alter the impression, or any part of the impression of either side of such lawful or counterfeit shilling or sixpence, with intent to make such shilling or sixpence resemble or pass for a lawful guinea, or half guinea, respectively; or shall file or alter, wash or colour any halfpennies or farthings, or add to or alter the impression, or any part of the impression, of either side of a halfpenny or farthing, with intent to make such halfpenny or farthing resemble or pass for a lawful shilling or six pence respectively, such offender, his counsellors, aiders, abettors, and procurers,

Treason to wash over a lawful or false shilling or six-pence, to resemble a guinea or half guinea:

15 Geo. 2. c. 28. s. 1. Eng.

Or halfpenny or farthing, to resemble a shilling or sixpence.

s. 4. curers, shall be guilty of high treason. But by s. 4. the
Blood not to be blood of any person convicted of any of the treasons [or
corrupted. felonies] herein mentioned, shall not be corrupted, nor
s. 8. shall his wife lose her dower. And by s. 8. whoever,
Offenders con- being out of prison, shall commit any of the offences
victing 2 others, aforesaid, and shall discover 2 or more persons, so as
pardoned. they shall be convicted of any of said offences, he shall
s. 5. be pardoned. By s. 5. offenders against this act shall
Trial how to be. be indicted, arraigned, tried, and convicted, by such
Limitation. evidence, and in such manner, as other offenders for
counterfeiting the coin: provided that all prosecutions
for the offences made treason or felony by this act, shall
**"2 years" in* be commenced within [*6 months] after the offence com-
the 23 & 24 mitted. The 23 & 24 Geo. 3. c. 50. Ir. contains simi-
Geo. 3. c. 50. Ir. lar provisions.
Clipping, &c. And by the 5 Eliz. c. 11. s. 2. Eng. clipping, washing,
current coin, rounding, or filing, for wicked gain's sake, any of the
treason. proper monies or coins of this realm, or the dominions
5 Eliz. c. 11. thereof, or of the monies or coins of any other realm,
& 2. Eng. by proclamation allowed to be current here, shall be ad-
judged to be treason; and the offenders, their counsel-
lors, consenters, and aiders, shall suffer death, and for-
feit their goods, and shall also forfeit their lands during
their lives only. And by s. 3. persons which have grant
to enjoy the forfeitures of lands or goods of men attaint-
ed in high treason, shall have all such forfeitures by
force of this act. By s. 4. any attainder by this act shall
not make any corruption of blood, or make any wife lose
her dower. And by s. 5. peers of the realm shall be
tried by their peers as heretofore. The 18 Eliz. c. 1.
Eng. further provides, that if any person shall for wick-
ed lucre or gain's sake, by any art, ways, or means, im-
pair, diminish, falsify, scale, or lighten, the proper mo-
nies or coins of this realm, or the dominions thereof, or
the monies of other realms allowed to be current within
this realm, or the dominions of the same, by proclama-
tion, such offenders, their counsellors, consenters, and
aiders, shall be adjudged offenders in treason, and shall
suffer

suffer death, and forfeit all their lands, &c. during their lives only. By s. 2. any attainder by this act shall not make any corruption of blood, nor make the wife lose her dower. And by s. 3. peers of the realm shall have their trial by their peers. No statute similar to these has been passed in Ireland: But the 3 Hen. 5. st. 2. c. 6 E. & I. which was repealed in England by the 1 Mar. st. 1. c. 1. Eng. remains in force in Ireland. This statute, to remove the doubts which had arisen upon the 25 Edw. 3. st. 5. c. 2. declares, that clipping, washing, and filing, shall be adjudged for treason.

s. 2.

No corruption of blood, &c.

s. 3.

Peers tried by their peers.

3 Hen. 5. st. 2. c. 6. E. & I.

Clipping, &c. money, treason.

And another species of treason relative to the coin under the 25 Edw. 3. is "if a man bring false money into the realm, counterfeit to the money of England, knowing the money to be false, to merchandize or make payment in deceit of the king and his people." And by the 1 & 2 Ph. & M. c. 11. s. 2. Eng. if any person shall bring into this realm, or the dominions of the same, any false and counterfeit coin or money being current within this realm, knowing the same to be false, &c. to the intent to utter or make payment with the same within this realm, or any of the dominions of the same, such person, his counsellors, procurers, aiders, and abettors, shall be deemed offenders in high treason. And by s. 3. all persons that shall be accused of any offence concerning the impairing, counterfeiting, or forging of any coin current within this realm, may be indicted, tried, or attainted, by such evidence, and in such manner, as hath been used at any time before the first year of king Edward VI. No statute similar to this has been passed in Ireland.

Bringing counterfeit money into the realm, treason.

25 Edw. 3. st. 5. c. 2. E. & I.

1 & 2 Ph. & M. c. 11. s. 2. Eng.

So though the money be not the king's money, but current.

s. 3.

Offences here tried.

VII. The last species of treason declared or defined by the 25 Edw. 3. is "if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices."

§ 7.

Slaying the king's officers, treason.

25 Edw. 3. st. 5. c. 2. E. & I.

VIII. Next as to high treason in respect of papists: I shall reserve for a subsequent chapter, the 5 Eliz. c. 1. Eng. which contains clauses making the offences of defending

§ 8.

Defending the pope's jurisdiction, &c. treason.

5 Eliz.c.1.Eng.

13 Eliz. c. 2.

s. 1.2.3. Eng.

Using popish
bulls, &c.
within the realm
treason.

s. 4.

Penalty of
aiders, &c.

s. 5.

Concealing bulls
misprision of
treason.

s. 6.

Proviso.

s. 11.

Peers tried by
their peers.

s. 12.

Proviso.

§ 9.

fending the pope's jurisdiction in this realm, and also the refusing the oath of supremacy, high treason, under certain circumstances. But the 13 Eliz. c. 2. Eng. is to be here stated, which enacts, that if any person shall use or put in ure, within the queen's dominions, any bull or instrument of absolution or reconciliation from the bishop of Rome, or from any person claiming authority from the said bishop; or if any person shall take upon him, by colour of any such bull, &c. to absolve or reconcile any person, or to grant or promise to any person, within the queen's dominions, any such absolution or reconciliation, by any speech, preaching, teaching, writing, or other open deed; or if any person, within the queen's dominions, shall willingly receive any such absolution, &c.; or else if any person shall obtain from the see of Rome any bull, writing, or instrument, containing any thing whatsoever; or shall publish or put in ure any such bull, &c. every such act shall be high treason. And by s.4. all aiders, comforters, or maintainers, of any the said offenders, after the committing any of the said acts, to the intent to uphold or allow the execution of the said usurped power, shall incur the penalties in the statute of *præmunire* (16 Ric. 2. c. 5). And by s. 5. if any person to whom any such absolution, reconciliation, bull, writing, or instrument, shall be offered, shall conceal the same, and not disclose the same, within 6 weeks, to some of the privy council, he shall incur the penalty of misprision of high treason. But by s. 6. no person shall be troubled for misprision of treason, for any offence made treason by this act, other than such as by this act are before declared to be in case of misprision of high treason. By s. 11. if any peer shall be indicted for the offences aforesaid, he shall have his trial by his peers as in cases of treason, or misprision of treason. Saving (by s. 12.) to all persons (other than the offenders, and their heirs, and such as claim to their uses) all rights, &c. The popery laws of Ireland do not contain any similar provisions.

IX. By the 27 Eliz. c. 2. s. 3. Eng. it shall not be lawful for any jesuit, seminary priest, or other priest, deacon,

deacon, or religious or ecclesiastical person, being born within this realm, or her highness's dominions, and ordained or professed by any authority from the see of Rome, to come into or remain in this realm, &c. other than in cases expressed in this act; and if he do, such offence shall be high treason. And by s. 5. if any of her majesty's subjects (not being a jesuit, &c.) who shall be of, or brought up in, any college of jesuits, or seminary out of the realm, shall not, within 6 months after proclamation made in the city of London under the great seal, return into this realm, and, within 2 days after such return, before the bishop of the diocess, or 2 justices of peace of the county where he shall arrive, submit himself to her majesty, and take the oath of supremacy, every such person who shall otherwise return, or be in this realm without submission, shall be guilty of high treason.* The 9 W. 3. c. 1. Ir. makes it high treason in jesuits, friars, or any papists exercising ecclesiastical jurisdiction, to return from transportation to which they are liable by this act: But this statute will be more fully stated in another place.

Treason for jesuits, &c. to come into, or remain in, the realm.

27 Eliz. c. 2.
s. 3. Eng.

s. 5.

Those in foreign seminaries to return, or guilty of treason.

9 W.3. c.1. Ir.

Treason for jesuits, &c. to return from transportation.

X. By the 23 Eliz. c. 1. s. 2. Eng. all persons who shall have or pretend to have power, or shall put in practice, to absolve, persuade, or withdraw any of her majesty's subjects from their natural obedience, or to withdraw them for that intent from the established to the Romish religion, or to move them to promise obedience to any pretended authority of the see of Rome, or of any other prince, state, or potentate, to be had or used within her dominions, or shall do any overt act to that intent, shall be adjudged traitors; and if any person shall be willingly absolved or withdrawn as aforesaid, or willingly be reconciled, or shall promise any obedience to any such pretended authority, prince, &c. such person, his procurers and counsellors, shall be judged and suffer as in cases of high treason. And by s. 3. all persons that shall wittingly be aiders or maintainers of such persons so offending, or shall conceal any such offence

§ 10.

Treason to withdraw any one from his allegiance, &c.

23 Eliz. c. 1.
s. 2. Eng.

s. 3.

Penalty of aiders, &c.

* Vide page 417—8. where several other clauses of this statute are stated.

- fence, and shall not, within 20 days after knowledge of such offence, disclose the same to a justice of peace, or other high officer, shall be judged and suffer as in misprision of treason. Provided (s. 14.) if any peer of this realm be indicted of treason or misprision of treason under this act, he shall have his trial by his peers. And the 3 Jac. 1. c. 4. s. 22. Eng. also enacts, that if any person shall either upon the seas, or beyond the seas, or in any other place within the dominions of the crown, put in practice to absolve, persuade, or withdraw any subject from his natural obedience to the king, or to move him to promise obedience to any pretended authority of the see of Rome, or to any other prince, state, or potentate, such person, his procurers, counsellors, aiders, and maintainers, knowing the same, shall be adjudged traitors. And by s. 23. if any person shall be, upon the seas, or beyond the seas, or within the dominions of the crown, willingly absolved or withdrawn as aforesaid, or willingly reconciled, or shall promise any obedience to such pretended authority, prince, state or potentate, such person, his procurers and counsellors, aiders and maintainers, knowing the same, shall be adjudged traitors. Provided (s. 24.) that the last mentioned clause shall not extend to any person who shall be reconciled to the pope, or see of Rome, (for being reconciled only) that shall return into this realm, and, within 6 days after such return, before the bishop of the diocess, or 2 justices of peace jointly or severally, of the county where he shall arrive, submit himself to his majesty, and his laws, and take the oath of supremacy appointed by the 1 Eliz. c. 1. (which is altered by the 1 W. & M. st. 1. c. 8.), and the oath set down in this act (but which is abolished by the 1 W. & M. st. 1 c. 8.); and the said oaths so taken, the bishop and justices shall certify at the next general sessions, upon pain of forfeiting £40. By s. 25. every person that shall offend against this branch of the statute, shall be indicted, tried, and proceeded against, before the justices of assize, and gaol delivery, or before the court of king's bench, as if the offence had been committed in the county where such persons shall be taken. Provided (s. 26.) that any peer
- s. 14.
Peers tried by their peers.
3 Jac. 1. c. 4. s. 22. Eng.
Withdrawing any one from his allegiance, &c. treason.
- s. 23.
Or to be withdrawn, &c.
- s. 24.
Proviso as to persons taking the oath, &c.
- s. 25.
Where the trial shall be.
- s. 26.
Peers tried by their peers.

peer, indicted of any offence made treason by this act, shall have his trial by his peers. To these statutes there are none corresponding in Ireland.

XI. For the security of the protestant succession, the § 11.
 1 Ann. st. 2. c. 17. s. 3. Eng. enacts, that if any person shall endeavour to deprive or hinder any person being next in succession to the crown for the time being, according to the limitations of the (acts of settlement) *Treason to endeavour to defeat the protestant succession.*
 1 W. & M. st. 2. c. 2. and 12 & 13 W. 3. c. 2. from succeeding to the crown, and shall maliciously, advisedly, and directly attempt the same by any overt act or deed, such offence shall be adjudged high treason, and the offenders therein, their abettors, procurers, and comforters, knowing the said offence to be done, being thereof convicted or attainted, shall be adjudged traitors. The 1 Ann. st. 2. c. 17. s. 3. Eng
 2 Ann. c. 5. Ir. contains a corresponding provision; and 2 Ann. c. 5. Ir.
 by s. 2. further provides, that if any person being a native of this realm, shall offend contrary to this act in any s. 2.
 parts beyond the seas, or on the high sea, such offender *Persons guilty of such treason beyond sea, where tried.*
 shall be tried in such county in this kingdom, as the crown, by commission under the great seal of this kingdom, shall appoint. And by the 6 Ann. c. 7. s. 1. Eng. 6 Ann. c. 7. s. 1. Eng.
 if any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any other person hath any right or title to the crown of these *Treason by writing, &c. to deny the title to the crown under the act of settlement.*
 realms, otherwise than according to the 1 W. & M. st. 2. c. 2. 12 & 13 W. 3. c. 2. and the acts made in England and Scotland for the union of the two kingdoms; or that the kings or queens of this realm, with and by the authority of parliament, are not able to make laws to bind *Or authority of parliament to limit succession.*
 the crown, and the descent, limitation, inheritance, and government thereof; such person shall be guilty of high treason. To which there is no similar statute in Ireland.

To restrain all vague notions of constructive treason, the 25 Edw. 3. st. 5. c. 2. E. & I. provides, that if any other case (than those mentioned in this act) supposed treason, happen before any justices, they shall tarry without going to judgment, till the case be shewed before the king and his parliament, whether it ought to be judged treason or felony. *Constructive treasons.*
25 Edw. 3 st. 3. c. 2. E. & I.

CHAP. IV.

Of Felonies injurious to the King's Prerogative.

§ 1. **BEFORE** I proceed to the modern statutes which re-
What coin shall spect offences relating to the coin, (not amounting to
be current. treason,) it is proper in the first place, to refer briefly to
 20 Edw. 1. st. 4. E. & I. the more ancient statutes. The 20 Edw. 1. st. 4. E. & I.
 enacts, that it shall be proclaimed throughout the realm,
 that no man upon pain of grievous forfeiture, shall dis-
 pend or receive money of other coin than of the king of
 England, of Ireland, and of Scotland. And by s. 4. if
 any shall find money of other coin, he shall pierce the
 same, and none shall gainsay upon pain of grievous for-
 27 Edw. 3. st. 2. feiture. And by the 27 Edw. 3. st. 2. c. 14. E. & I. no
 c. 14. E. & I. money shall have common currency within the realm but
 17 Ric. 2. c. 1. the king's coin. And the 17 Ric. 2. c. 1. E. & I. fur-
 E. & I. ther enacts, that no gold nor silver of lands beyond the
 sea shall run in payment, but shall be brought to the
 mint, to be molten in the coin of England, upon pain of
 forfeiture of the same, and of imprisonment, fine, and
 3 Hen. 5. st. 1. ransom. By the 3 Hen. 5. st. 1. c. 1. E. & I. none shall
 c. 1. E. & I. make, buy, or import the coin (then prohibited by pro-
 clamations) called gally-halfpence, suskins, and dodkins,
 upon pain of forfeiting lands and tenements, goods and
 chattels, as in other cases of felony; and any person
 paying or receiving such coins, thereby forfeits 100s.
 2 Hen. 6. c. 9. And by the 2 Hen. 6. c. 9. E. & I. any person paying or
 E. & I. receiving the money called blanks, incurs the like pe-
 nalty of 100s. And on the other hand it was enacted by
 27 Edw. 1. st. 3. the 27 Edw. 1. st. 3. E. & I. that no silver coin, (or
 E. & I. plate) shall be carried out of the realm without the king's
 special leave, under pain of forfeiture. And this sta-
 9 Edw. 3. st. 2. c. 1. E. & I. tute was further enforced by the 9 Edw. 3. st. 2. c. 1.
 17 Edw. 3. E. & I. 17 Edw. 3. 27 Edw. 3. st. 2. c. 14. 5 Ric. 2. st. 1. c. 2. and
 5 Ric. 2. st. 1. c. 2. E. & I. 2 Hen. 4.

2 Hen. 4. c. 5. And by the 2 Hen. 6. c. 6. E. & I. 27 Edw. 3. st. 2. c. 14. E. & I. neither gold nor silver shall be carried out of the realm, 2 Hen. 4. c. 5. E. & I. (unless for payment of the king's soldiers) upon pain of forfeiture of the value of the money carried out. By the 2 Hen. 6. c. 6. E. & I. 17 Edw. 4. c. 1. E. & I.* no person shall carry out of the realm, coin, &c. of gold or silver, without license of the king, on pain of forfeiture.† With respect to false money; by the 20 Edw. 1. st. 1. E. & I. he that findeth false money shall break it, without restoring it; and the body of him in whose hands false or clipped money shall be found, shall be taken until he find surety, if he be a suspicious man. And by the 27 Edw. 1. st. 3. E. & I. none shall bring the false money, called pollards and crockards, into the realm, on pain of forfeiting life and goods. Gold or silver not to be carried out of the realm. The 9 Edw. 3. st. 2. c. 2. E. & I. prohibited the bringing of false money into the realm, upon pain of forfeiting the same. 20 Edw. 1. st. 1. E. & I. But by the 17 Edw. 3. E. & I. any person bringing false money into the realm, shall forfeit life and member. Penalty for having false money.

With respect to impairing the coin: the 9 Edw. 3. st. 2. c. 3. E. & I. enacts, that no sterling halfpenny or farthing shall be molten to make any vessel or other thing, upon forfeiture of the money so molten; and the goldsmith which hath molten such money, shall be committed to prison till he hath yielded the one half of that which he hath molten. Penalty for impairing the coin. And by the 17 Edw. 4. c. 1. E. & I.* no person shall melt down any money of gold or silver, sufficient to run in payment, upon pain of forfeiture of the value. 9 Edw. 3. st. 2. c. 2. E. & I. And by the 13 & 14 Car. 2. c. 31. 17 Edw. 3. E. & I. Eng. no person shall melt any current silver money, upon pain of forfeiture of the same, and of the double value, the one half to his majesty, the other to the informer, who shall sue by action of debt, &c. in any of his majesty's courts at Westminster. And the persons offending

* This statute was made perpetual by the 3 Hen. 7. c. 8. Eng. but was continued for 20 years by the 7 Edw. 6. c. 6. Eng.

† The 19 Hen. 7. c. 5. Eng. which prohibited the conveying out of the realm into Ireland, any bullion, plate, or coin, of gold or silver, above the sum of 6s. 8d. is so far repealed by the 20 Geo. 3. c. 18. Eng. But the 19 Hen. 7. c. 5. also prohibited the bringing from Ireland into England above the sum of 3s. 4d.

offending, if they be freemen of any city, or corporation, shall, upon conviction, be disfranchised; and if they shall not be freemen, they shall suffer imprisonment for

6&7W.3.c.17.
s. 1.&2. Eng.

Penalty for receiving or paying silver money at more than its proper value.

6 months next ensuing their conviction. The 6 & 7 W. 3. c. 17. Eng. recites, that the practice of diminishing the current coin is much occasioned by those who drive a trade of exchanging broad money for clipped money, and by other devices: and enacts, that if any person shall at any one time exchange, lend, sell, borrow or buy, receive or pay, any silver money unclipped, of the coin of this kingdom, for more than the same ought to go for, he shall forfeit £10. for every 20s. and so in proportion for any greater or lesser sum; one moiety to his majesty, and the other moiety to be recovered with costs by him who will sue by action of debt, &c. And by

s. 4.

Penalty for buying, &c. clippings or filings of coin.

s. 4. if any person shall buy or sell, and knowingly have in his custody, any clippings or filings of the coin, he shall forfeit the same, and £500.; one moiety to his majesty, and the other to the informer, to be recovered as aforesaid; and he shall be also branded in the right cheek with the letter R. And by s. 8. it shall be lawful

s. 8.

What persons may break open houses, &c. and search for bullion.

for one or more of the wardens of the goldsmiths company, with any two or more of the court of assistants of said company within the bills of mortality, or any 2 justices of peace within any county, &c. out of the bills of mortality, to enter into the house, room, or workshop of any person suspected of buying or selling unlawful bullion, and search for the same; and in case the occupier of such house, &c. shall refuse to permit the said warden and assistants, or justices, to make such search, they may, with the assistance of a constable, break open any door, box, trunk, chest, cupboard, or cabinet, in order to search for such bullion: and in case of finding any such, shall seize as well the same, as the person in whose possession it shall be found; and the said wardens, assistants and constables, shall bring the parties before the next justice of peace, who shall, upon oath made of such finding, (which justice within the bills of mortality, and the said 2 justices without the said bills of mortality, shall and may*) examine the person so brought before him, or found by them respectively, upon oath,

*This seems to be incorrectly printed.

oath, whether the bullion so found be lawful silver, and whether the same were not (before the melting thereof) the current coin of this realm, or clippings thereof; and in case the person so examined shall not prove by his oath, or by the oath of one witness, before the said justice and justices respectively, that the bullion so found is lawful silver, and that the same was not, before the melting thereof, the current coin of this realm, nor clippings thereof, then the said justice or justices shall commit such person to prison, and shall secure the bullion so found, and shall likewise oblige the persons that can give any evidence concerning the same, to enter into recognizance to prosecute the said offender; and in case such offender, in whose possession such unlawful bullion shall be found, shall not, upon his trial on an indictment for melting the current silver coin of this realm, prove, by the oath of one witness, the bullion so found to be lawful silver, and that the same was not the current coin of this realm, nor clippings thereof, then, and for want of such proof, such offender shall be found guilty of the offence contained in such indictment, and shall suffer imprisonment for 6 months. By s. 9. every person who shall apprehend any who have counterfeited the coin, or that for gain have diminished the same, or brought into this kingdom any clipt or counterfeit coin, and prosecute such persons until they be convicted, shall have from the sheriff for every person convicted £40. without fee, within one month after conviction and demand made, by tendering a certificate to the sheriff, under the hands of the judge or justices, certifying the conviction, and that such traitor was taken and prosecuted by the person claiming the reward; and in case any dispute shall arise between the persons apprehending and prosecuting such traitors, the judge or justices shall, in their certificate, appoint the reward to be paid amongst the parties, in such proportions as shall seem just; and if default of payment shall be made, such sheriff making default, shall forfeit to the persons to whom such money is due, double the sum he ought to have paid, to be recovered by them or their executors, &c. in any court of record at Westminster, by action of debt

Persons in whose possession bullion is found, not proving it to be neither coin nor clippings melted, to be imprisoned 6 months.

s. 9.

Rewards for convicting persons counterfeiting or diminishing coin.

- s. 10. & 11. debt, &c. with treble costs. By s. 10. all sheriffs upon producing such certificates, and the receipts for the money, shall be allowed upon their account all monies which they shall disburse as aforesaid, without fee. And by s. 11. if there shall not be money sufficient in the hands of the sheriffs to reimburse them, they shall have the same repaid by the treasury, upon certificate from the clerk of the pipe. By s. 12. if any person, being out of prison, shall be guilty of clipping, coining, counterfeiting, or diminishing the coins, and discover persons who shall commit any of the said crimes, so as 2 or more shall be convicted; such discoverer shall have his majesty's pardon for all such crimes; and if he be an apprentice, he shall be deemed a freeman, and may exercise any lawful trade, as if he had served the full time of his apprenticeship. And the 9 & 10 W. 3. c. 21. Eng. further provides, that it shall be lawful for any person to whom silver money shall be tendered, any piece whereof shall be diminished, otherwise than by reasonable wearing, or that by the stamp, colour, or weight thereof he shall suspect to be counterfeit, to cut or deface such piece; and if any piece, so cut, &c. shall appear to be counterfeit, the person tendering the same shall bear the loss; but if the same shall be of due weight, and lawful money, the person that broke or defaced the same, shall take the same at the rate it was coined for; and if any question arise whether the piece be counterfeit, it shall be determined by the mayor, bailiff, or other chief officer of any city or town corporate, where such tender shall be made; and if out of any city, &c. then by the next justice of peace. And by s. 2. the tellers of the receipt of the exchequer, their deputies and clerks, and the receivers general of every branch of the revenue, shall break or deface every piece of counterfeit or unlawfully diminished silver money, that shall be tendered to them to the use of his majesty. And the 13 Geo. 3. c. 71. Eng. contains the same provisions in respect to gold money, that the 9 & 10 W. 3. c. 21. Eng. *supra*, does with regard to silver money. Clipped money was prohibited to be taken in payment in Ireland by the 3 Edw. 4. c. 3. Ir. which declared that it should not
- Sheriffs reimbursed.*
- s. 12.
- Offenders discovering 2 others, pardoned.*
- If apprentices they shall be free.*
- 9 & 10 W. 3. c. 21. s. 1. Eng.
- Any person may cut or deface diminished or counterfeit silver money.*
- s. 2.
- Officers of the exchequer, &c. required to cut, &c. such money.*
- 13 Geo. 3. c. 71. Eng.
- So also gold money.*
- 3 Edw. 4. c. 3. Ir.

not be accounted as the king's coin. And the 8 Ann. 8 Ann. c. 6.
 c. 6. Ir. contains clauses similar to those of the 9 & 10 s. 8 & 9. Ir.
 W. 3. c. 21. *supra*, but extends to gold money as well as
 silver money.

With respect to the offence of uttering counterfeit Punishment for
 money in general; the 15 Geo. 2. c. 28. s. 2. Eng.* pro- uttering coun-
 vides, that if any person utter or tender in payment any terfeit money.
 false or counterfeit money, knowing the same to be so, 15 Geo. 2. c. 28.
 he shall suffer 6 months imprisonment, and find sureties s. 2. Eng.
 for his good behaviour for 6 months more; and if the
 same person be convicted a 2d time, he shall suffer
 2 years imprisonment, and find sureties for his good
 behaviour for 2 years more; and if the same person be
 convicted a 3d time, he shall be guilty of felony without
 benefit of clergy. And by s. 3. if any person utter or s. 3.
 tender in payment any false or counterfeit money, Punishment of
 knowing the same to be so, and either the same day, or uttering false
 within 10 days then next, utter, &c. any more, or other money twice in
 false or counterfeit money, knowing the same to be so, 10 days, or ha-
 or at the time of such uttering have about him in his ving other false
 custody one or more pieces of counterfeit money, be- money in custo-
 sides what was so uttered, &c. such person shall be deemed
 a common utterer of false money; and shall suffer a
 year's imprisonment, and find sureties for his good beha-
 viour for 2 years more; and if such person again utter
 &c. any false or counterfeit money, knowing the same
 to be so, he shall be adjudged guilty of felony without
 benefit of clergy. And by s. 9. if any person be con- s. 9.
 victed of uttering or tendering any false or counterfeit
 money, as aforesaid, and afterwards be guilty of the Manner of pro-
 like offence in any other county or city, the [†clerk of secuting a 2d of-
 assize,] or clerk of the peace for the county, &c. where fence in another
 such conviction was, shall, at the request of the prose- county.
 cutor, or any other on his majesty's behalf, certify the * "Clerk of the
 same by a transcript, containing the effect of such con- crown" in 23 &
 viction; for which certificate 2s. 6d. shall be paid; and 24 Geo. 3. c. 50.
 such certificate being produced in court, shall be proof
 of such former conviction. The 23 & 24 Geo. 3. c. 50. 23 & 24 Geo. 3.
 Ir. contains also similar clauses. c. 50. Ir.

The

* *Vide* s. 4. 5. & 8. *ante* page 478. and s. 7. & 10. *post.* page 490—1.

§ 12. The 8 & 9 W. 3. c. 26. Eng. (the other clauses of which have been stated in the preceding chapter) provides, (s. 6.) that if any person shall blanch copper for sale, or mix blanch copper with silver, or knowingly buy or sell, or offer to sale, blanch copper alone, or mixed with silver; or shall knowingly and fraudulently buy or sell, or offer to sale, any malleable composition or mixture of metals or minerals, which shall be heavier than silver, and look and touch, and wear like standard gold, but be manifestly worse than standard; or shall take, receive, pay, or put off, any counterfeit milled money, or any milled money unlawfully diminished, and not cut in pieces, at or for a lower rate or value than the same by its denomination shall import, or was coined or counterfeited for; every such person shall be guilty of felony, and suffer death. The 8 Ann. c. 6. Ir. contains a corresponding provision.

Felony to blanch copper for sale, &c.

§ 8 & 9 W. 3. c. 26. s. 6. Eng.

Or to buy or sell metals, &c. resembling gold.

Or to buy or sell counterfeit money.

8 Ann. c. 6. s. 1. Ir.

Coiners of copper money imprisoned 2 years.

15 Geo. 2. c. 28. s. 6. Eng.

s. 7.

Rewards for convicting offenders against this act.

**Vide p. 477* 8. 489.

By the 15 Geo. 2. c. 28. s. 6. Eng. any person who shall make, coin, or counterfeit any brass or copper money, called a halfpenny or a farthing, and his aiders, abettors, and procurers, shall suffer 2 years imprisonment, and find sureties for his good behaviour for 2 years more, to be computed from the end of the first 2 years. And by s. 7. whosoever shall apprehend any person who shall have committed any of the offences hereby made* treason or felony, or made or counterfeited any of the copper money aforesaid, and shall prosecute such offender, until he shall be convicted, such prosecutor shall receive from the sheriff of the county or city where such conviction shall be, for every such offender convicted of any of the *treasons or felonies aforesaid, £40. and for every person so convicted of counterfeiting any of the said copper money, £10. (without paying any fee for the same) within one month after such conviction, and demand made, by tendering a certificate to the sheriff or under-sheriff, under the hands of the judge or justices before whom such conviction was made, certifying such conviction, and that the offender was apprehended and prosecuted by the persons claiming the reward, and directing in what shares the reward shall be divided; which certificate

certificate the judge or justices are to give without delay or fee. And if the sheriff shall not pay the reward within the time aforesaid, he shall forfeit to such prosecutors severally, double the sum by the certificate directed to be severally paid to them, to be recovered by them, or their executors or administrators, in any court of record at Westminster, by action of debt, &c. with treble costs; and such sheriff shall be allowed such rewards upon his accounting, without fee; and if he shall not on passing such account, have money sufficient to answer what has been paid for such rewards, then the same shall be repaid by the treasury out of the revenue of the crown, on certificate from the clerk of the pipe. And by s. 10. the commissioners of the treasury shall order out of the money arising by the coinage duty, such sums, for defraying the future expenses of the prosecutions of offenders against the laws relating to the coin, as they shall see fit, provided the said expenses do not in one year exceed £600. But by the 11 Geo. 3. c. 40. s. 1. Eng. any person who shall make, coin, or counterfeit any of the copper monies of this realm, called a halfpenny, or a farthing, and his counsellors, aiders, abettors, and procurers, shall be guilty of felony. And by s. 2. any person who shall buy, sell, take, receive, pay, or put off any counterfeit copper money not melted down, or cut in pieces, at or for a lower rate or value than the same by its denomination shall import, or was counterfeited for, shall be guilty of felony. By s. 3. it shall be lawful for any justice of peace, on complaint made before him upon the oath of one person, that there is just cause to suspect that any person hath been concerned in counterfeiting the *copper monies of this realm, by warrant under his hand, to cause the dwelling house, or other place belonging to such suspected person, to be searched for tools and implements for coining such *copper monies; and if any tools, &c. shall be found concealed in any place so searched, or be found in the custody of any person not then employed in the coining of money in some of his majesty's mints, nor having the same by lawful authority, any person discovering the same

s. 10.

Sum allowed out of coinage duties to defray expenses of prosecutions.

11 Geo. 3.c.40. s. 1. Eng.

Felony to counterfeit copper money.

s. 2.

Felony to buy or sell counterfeit copper money.

s. 3.

Justices to search houses of suspected persons.

*" Gold, silver or" here added in 23 & 24 Geo. 3. c.50. Ir.

Tools, &c. discovered, how disposed of.

37 Geo. 3. c. 126. s. 1. Eng.

Provisions of 15 Geo. 2. c. 28. s. 6. and 11 Geo. 3. c. 40. extended to copper money coined or made current.

23 & 24 Geo. 3. c. 50. Ir.

s. 10.

Reward for prosecuting offenders against this act.

same shall seize the same, and carry them forthwith to some justice of peace of the county, &c. where the same shall be seized, who shall cause the same to be secured, and produced in evidence against any person who shall be prosecuted for any of the offences in this act; and after any such tools, &c. shall be produced in evidence, those produced, as also those not made use of in evidence, shall, forthwith, by order of the court, or by order of some justice of peace in case there be no such trial, be defaced and destroyed, or otherwise disposed of as such court or justice shall direct. The 37 Geo. 3. c. 126. s. 1. Eng. recites the 15 Geo. 2. c. 28. *supra*, (which made this offence a misdemeanor) and the 11 Geo. 3. c. 40. *supra*, (which made the same offence a felony) and enacts, that so much of the 15 Geo. 2. as relates to the said copper monies of this realm, and also the 11 Geo. 3. and every other act concerning the said copper monies called a halfpenny and a farthing, or other copper money of this realm, shall extend to all such pieces of copper money as shall be coined and issued by order of the king, and as shall by his proclamation be ordered to be taken as the current money of this realm. The 23 & 24 Geo. 3. c. 50. Ir. has followed the 11 Geo. 3. c. 40. *supra*, with such deviation only as is noted in the margin: and in analogy to the 15 Geo. 2. c. 28. *supra*, provides, that whosoever shall apprehend any person who shall have committed any of the offences hereby made treason or felony, and shall prosecute such offender until he be convicted, such prosecutor shall, within 21 days after conviction, receive from the collector of the district where such offence shall have been committed, for every offender so convicted, £10. without paying any fee, upon making a demand, and tendering a certificate to such collector, under the hand of the judge, certifying such conviction, and that the offender was prosecuted by the person claiming the said reward, and thereby directing in what shares the said reward shall be paid to and divided amongst such prosecutor or prosecutors, which certificate the judge is required to give without delay or fee

fee; and if such collector shall not pay such reward within the time aforesaid, he shall forfeit to such prosecutor or prosecutors double the sum directed to be severally paid to them, to be recovered by him or them, in any court of record at Dublin, by action of debt, &c. with treble costs; and such collectors shall be allowed such rewards upon their accounting, without any fee in respect thereof. But this statute further provides (s. 9)

s. 9.

that if any person shall, without lawful authority from the king, and sufficient excuse, knowingly make or mend, or have in his house, custody, or possession, any puncheon, counter puncheon, matrix, stamp, dye, edger, cutting engine, press, flask, pattern, mould, or other tool or instrument fit for coining copper coin, or for coining any copper coin current, or to be made current in this kingdom, such person shall be adjudged guilty of a misdemeanor, and be punished by fine, imprisonment, and other corporal punishment, at the discretion of the judge before whom he shall be convicted. By

Misdemeanor to make, mend, or have any tool for counterfeiting copper coin.

s. 13. all halfpence which shall be imported into, or attempted to be landed in this kingdom, under whatever denomination, shall be liable to be seized, and condemned, in like manner as if the same were exciseable goods imported without due entry first made. And by s. 14.

s. 13.

Halfpence imported to be condemned.

such halfpence when condemned, shall be melted down, and then sold by public sale to the best bidder, one moiety to be paid to the king, the other to the officer who shall seize the same. Provided (s. 15.) that nothing herein shall extend to such halfpence as shall be coined in any of his majesty's mints for the use of this kingdom, and which shall be imported under the direction of the teller of the exchequer of this kingdom, or to such halfpence, (not exceeding the value of one shilling) as passengers or others may have in their pockets for present use.

s. 14.

And melted and sold.

s. 15.

Proviso.

By the 37 Geo. 3. c. 126. s. 2. Eng.* if any person shall make, coin, or counterfeit any kind of coin not the proper coin of this realm, nor permitted to be current

Felony to counterfeit foreign gold or silver coin not permitted to be current.

within 37 Geo. 3. c. 126. s. 2. Eng.

* Vide 14 Eliz. c. 5. Eng. post chap vi.

within the same, but resembling, or made with intent to resemble, any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, he shall be deemed guilty of felony, and may be transported for any term not exceeding 7 years.

s. 3.

Or bringing it into the realm.

And by s. 3. any person who shall bring into this realm any such false or counterfeit coin, (as in s. 2.) knowing the same to be false, &c. to the intent to utter the same within this realm, or the dominions thereof, shall be guilty of felony, and may be transported for any term not exceeding 7 years.

s. 4.

Punishment for uttering such counterfeit coin.

By s. 4. if any person shall utter or tender in payment, or give in exchange, or pay or put off to any person, any such false or counterfeit coin, (as in s. 2.) knowing the same to be false, &c. he shall suffer 6 months imprisonment, and find sureties for his good behaviour for 6 months more; and if convicted a 2d time for the like offence, shall suffer 2 years imprisonment, and find sureties for his good behaviour for 2 years more, to be computed from the end of the said 2 first years; and if the same person shall so offend a 3d time, he shall be guilty of felony without benefit of clergy.

s. 5.

Former convictions how certified.

And by s. 5. if any person shall be convicted of uttering or tendering any such counterfeit coin as aforesaid, and shall be afterwards guilty of the like offence in any other county, city, or place, the clerk of the assize, or clerk of the peace, for the county, &c. where such former conviction shall have been had, shall, at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript, in a few words, containing the effect and tenor of such conviction; for which certificate 2s. 6d. shall be paid; and such certificate, being produced in evidence, shall be sufficient proof of such former conviction.

s. 6.

Penalty for having more than 5 pieces of such counterfeit coin.

By s. 6. any person who shall have in his custody, without lawful excuse, any greater number of pieces than 5 of such false or counterfeit coin, (as in s. 2. mentioned,) being thereof convicted, upon the oath of one witness, before one of his majesty's justices of peace, shall forfeit such counterfeit coin, (which shall be destroyed by order of such justice) and shall forfeit any sum not exceeding £5. nor less than 40s. for every such piece

piece of counterfeit coin which shall be found in his custody, one moiety to the informer, and the other to the poor of the parish where the offence shall be committed; and in case such penalty shall not be forthwith paid, it shall be lawful for such justice to commit such person to the common gaol, or house of correction, to be kept to hard labour, for 3 calendar months, or until such penalty shall be paid. By s. 7. it shall be lawful for any justice of peace, on complaint of one person upon oath, that there is just cause to suspect that any person is or hath been concerned in making or counterfeiting any such false or counterfeit coin, (as in s. 2.) by warrant under the hand of such justice, to cause the dwelling house or other place belonging to such suspected person, or where such person shall be suspected to carry on such making or counterfeiting, to be searched for any such false coin, or for tools or implements for coining, or for materials for making the same; and if any such counterfeit coin, or any such tools, implements, or materials, shall be found in any place so searched, or if any tools, implements or materials, shall be found in the custody of any person not having the same by lawful authority, any person discovering the same shall seize such false or counterfeit coin, tools, implements, and materials, and carry the same to a justice of peace of the county, city, or place where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall be prosecuted for the offences aforesaid; and after any such coin, &c. shall have been produced, as well so much as shall have been produced, as every other part not made use of in evidence, shall, forthwith, by order of the court, or by order of some justice of peace in case there be no trial, be defaced or destroyed, or otherwise disposed of as such court or justice shall direct. And by s. 8. no proceedings to be had touching the conviction of any offender against this act, before any justice of peace, shall be quashed for want of form, or removed by *certiorari*, or other writ, into any court of record at Westminster. And by s. 9. if any action or suit shall be brought against any

s. 7.

*Houses, &c. of suspected persons searched.**Counterfeit coin, tools, &c. found, how disposed of.*

s. 8.

Proceedings not to be quashed for want of form, &c.

s. 9.

any person for any thing done in pursuance of this act, such action, &c. shall be commenced within 3 calendar months after the fact committed, and shall be brought in the place where such cause of action shall arise; and the defendant may plead the general issue, &c.; and the defendant shall have treble costs of verdict, nonsuit, discontinuance, or judgment upon demurrer. No statute similar to this has been made in Ireland.

Felony to counterfeit dollars or tokens.

44 Geo. 3. c. 71. U. K.

The 44 Geo. 3. c. 71. U. K. recites, that the bank of England have lately caused to be coined or stamped, and circulated, a quantity of silver dollars, containing on the obverse side thereof an impression of his majesty's head, and the following words and letter, viz. "*Georgius III. Dei Gratia Rex*" and on the reverse side thereof the impression of *Britannia*, and the following words and figures, viz. "Five Shillings Dollar Bank of England 1804"; and that the bank of Ireland are preparing to issue, for the convenience of Ireland, a quantity of silver coin denominated *Tokens*, containing on the obverse side thereof the same impression, words, and letters, as the said dollars, and on the reverse side thereof the impression of *Hibernia*, and the following words and figures: "Bank of Ireland Token 1804 Six Shillings"; and enacts, that if any person shall make, coin, or counterfeit, or cause to be made, &c. or willingly act or assist in the making, &c. any coin resembling, or made with intent to resemble, the said dollars so issued by the bank of England, or the said tokens so intended to be issued by the bank of Ireland, or to pass as such, such offender shall be guilty of felony, and be transported for any term not exceeding 7 years. And by s. 2. if any person shall bring into the united kingdom any such false or counterfeit dollar or token, as in s. 1. mentioned, knowing the same to be false, &c. to the intent to utter the same within the united kingdom, or the dominions of the same, such offender shall be guilty of felony, and be transported for any term not exceeding 7 years. And by s. 3. if any person shall utter or tender in payment, or give in exchange, or pay or put off any such false or counterfeit

s. 2.

Felony to bring counterfeit dollars or tokens into the realm.

s. 3.

counterfeit dollar or token as in s. 1. mentioned, knowing the same to be false, &c. such offender shall suffer 6 months' imprisonment, and find sureties for his good behaviour for 6 months more; and if such person shall be convicted a 2d time for the like offence, he shall suffer 2 years imprisonment, and find sureties for his good behaviour for 2 years more to be computed from the end of the first 2 years; and if he shall be convicted a 3d time of such offence, he shall be guilty of felony, and be transported for 14 years. By s. 4. if any person shall be convicted of uttering or tendering in payment any such counterfeit dollar or token, &c. and shall afterward be guilty of the like offence in any other county or place, the clerk of the assize or clerk of the peace for the county, &c. where such former conviction shall have been had, shall, at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript, in a few words, containing the effect and tenor of such conviction, for which certificate 2s. 6d. shall be paid; and such certificate shall be sufficient proof of such former conviction. By s. 5. if any person shall have in his custody, without lawful excuse, (the proof whereof shall lie upon the party accused) any greater number than 5 of such counterfeit dollars or tokens, &c. such person, being thereof convicted upon the oath of 1 witness, before one of his majesty's justices of peace, shall forfeit such counterfeit dollars, &c. which shall be cut in pieces, and destroyed by order of such justice; and every offender so convicted shall forfeit any sum not exceeding £5. nor less than 40s. for every counterfeit dollar, &c. found in his custody, one moiety to the informer, and the other to the poor of the parish where such offence shall be committed; and in case such penalty shall not be forthwith paid, it shall be lawful for such justice to commit such person to the common gaol, or house of correction, to be kept to hard labour for 3 calendar months, or until such penalty shall be paid. By s. 6. it shall be lawful for any one justice of peace, on complaint upon the oath of one witness, that there is just cause to suspect that any person

s. 4.

Former convictions how certified.

s. 5.

Penalty on persons having above 5 counterfeit dollars, &c. in their possession.

s. 6.

Houses, &c. of suspected persons may be searched.

Counterfeit dollars, tokens, and tools, &c. how disposed of.

s. 7.

Proceedings not to be quashed for want of form, &c.

s. 8.

Actions when and how brought.

bath been concerned in making or counterfeiting any such false dollar or token as in s. 1. mentioned, by warrant under the hand of such justice, to cause the dwelling house or other place belonging to such suspected person, or where any such person shall be suspected to carry on any such making or counterfeiting, or to secrete any such dollars or tokens, or the tools, implements, or materials for making the same, to be searched for the same; and if any such counterfeit dollar or token, or any such tools, implements or materials for making the same, shall be found in any place so searched, or if any such tools, implements, or materials, shall be found in the custody of any person not having the same by lawful authority, any person discovering the same shall seize such counterfeit dollars, tokens, tools, implements, and materials, and carry the same forthwith to a justice of peace of the county, &c. where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall be prosecuted for any of the offences aforesaid; and after the same shall be produced in evidence, as well so much as shall be so produced, as every part not made use of in evidence, shall forthwith by order of the court (or by order of some justice of peace, in case there be no trial) be defaced or destroyed, or otherwise disposed of as such court or justice shall direct. By s. 7. no proceedings touching the conviction of any offender against this act, before any justice of peace, shall be quashed for want of form, or removed by *certiorari*, or other writ or process, to any court of record at Westminster.* By s. 8. no action or suit shall be brought against any person for any thing done under this act, until 14 days notice thereof be given in writing to the person against whom the same is intended to be brought; nor shall any such action, &c. be commenced, after sufficient satisfaction or tender of amends shall be made or tendered to the party aggrieved; and every such action, &c. shall be commenced within 3 calendar months after the fact committed

* "Dublin" should have been here also added.

mitted, and shall be brought in the county or place where the cause of action shall arise; and the defendant may plead the general issue, &c.; and the defendant shall have treble costs of verdict, nonsuit, discontinuance, or judgment upon demurrer. The 45 Geo. 3. c. 42. U. K. recites, that the bank of Ireland are preparing to issue a quantity of silver pieces denominated *Tokens*, of the common standard of Spanish pillar dollars, containing on the obverse side thereof an impression of his majesty's head, and the following words and letters: viz. "*Georgius III. Dei Gratia*" and on the reverse side thereof the following words and figures: "Bank Token Five-pence Irish, 1805," or "Bank Token Ten-pence Irish, 1805," each such token for five-pence, containing one 13th part of the common weight of a Spanish pillar dollar, and each such token for ten-pence containing two such 13th parts; and enacts, that if any person shall make, coin or counterfeit, or cause or procure to be made, &c. or willingly act or assist in the making, &c. any piece of metal resembling, or made with intent to resemble the said tokens, or either of them, or to pass as such; or if any person shall bring into any part of the united kingdom, any such false or counterfeit token, knowing the same to be false, &c. to the intent to utter the same within the united kingdom, or any dominions of the same, such offender shall be guilty of felony, and shall be transported for any term not exceeding 7 years. And by s. 2: if any person shall utter or tender in payment, or give in exchange, or pay or put off any such counterfeit token as in s. 1. knowing the same to be counterfeited, or if any person shall have in his custody, without lawful excuse, (the proof whereof shall lie upon the party accused,) any greater number than 5 of such counterfeit tokens, such person shall be subject to the like pains and penalties, and shall be proceeded against in like manner, as mentioned and directed in the 44 Geo. 3. c. 71. *supra*, with respect to persons uttering, &c. or having in their custody without lawful excuse, the counterfeit dollars and tokens in said act mentioned. And

*Pleading.**Costs.*45 Geo. 3 c. 42.
s. 1. U. K.*Felony to counterfeit certain bank tokens.**Or to bring them into the realm, &c.*

s. 2.

Uttering such counterfeit tokens, or having more than 5 pieces, punishable according to
44 Geo. 3. c. 71.

by s. 3. all the provisions of the 44 Geo. 3. c. 71. shall be applied for carrying this act into execution, as if the same were repeated in this act. By s. 4. such silver bank tokens, which shall be issued during the continuance of the restrictions on payments in cash by the bank of Ireland, shall be accepted in payment by the officers of the revenue in Ireland; and the said bank, after said restriction removed, may charge the teller of the exchequer with all received by them. And the 48 Geo. 3. c. 31. U. K. recites that the governor and company of the bank of Ireland, are preparing to issue a quantity of silver pieces denominated *Tokens*, of the common standard of Spanish pillar dollars, containing on the obverse side thereof an impression of his majesty's head, and the following words and figures, "*Georgius III. Dei Gratia Rex 1808*"; and on the reverse side thereof an impression representing *Hibernia* with the words or figures "*Bank Token XXX Pence Irish*" each such token containing six 13th parts of the common weight of a Spanish pillar dollar; and this act also recites, that tokens for Ten-pence and Five-pence have been issued by said bank conformably to the description in the 45 Geo. 3. c. 42. with the variation only of the figures 1806 instead of 1805; and enacts, that if any person shall make, coin, or counterfeit, or cause or procure to be made, &c. or willingly aid or assist in the making, &c. any piece of metal resembling, or made with intent to resemble the said tokens for 30 pence Irish, or the said tokens for Ten-pence and Five-pence with the figures 1806, or to pass as such; or if any person shall bring into any part of the united kingdom any such counterfeit tokens, knowing the same to be counterfeited, to the intent to utter the same within the united kingdom, or within the dominions of the same; or if any person shall utter or tender in payment, or give in exchange, or pay or put off to any person, any such counterfeit token, knowing the same to be counterfeited; or if any person shall have in his custody without lawful excuse, the proof whereof shall lie on the party accused, any greater number than 5 of such counterfeited tokens; every such person shall be subject to the pains and penalties

s. 3.
The provisions
of the 44 Geo. 3.
c. 71. extended
to these tokens.

s. 4.
Bank tokens to
be taken in pay-
ment of revenue.

48 Geo. 3. c. 31.
U. K.

Persons counter-
feiting certain
bank tokens, or
importing them,
or uttering them
or having more
than 5 in their
possession, pun-
ishable according
to the 45 Geo. 3.
c. 42.

ties, and be proceeded against in such manner as is mentioned and directed by the 45 Geo. 3. c. 42. *supra*, in regard to the tokens in said act mentioned. And by s. 2. all the provisions of the 45 Geo. 3. c. 42. with respect to the counterfeit tokens in said act mentioned, shall be applied for the carrying this act into execution, in relation to the said tokens for 30 pence, and the said tokens for 10 pence, and 5 pence, with the figures 1806 thereon, as fully as if the said clauses were repeated in this act. By s. 3. all sums payable in Ireland for any part of the public revenue, shall be accepted by the officers of the revenue in the said silver tokens for 30 pence each, which shall be issued during the continuance of the restriction on payments in cash by the bank of Ireland.

s. 2.

The provisions of the 45 Geo. 3. c. 42. extended to these tokens.

s. 3.

These tokens to be taken in payment of the revenue.

For preventing the counterfeiting of foreign copper money, the 43 Geo. 3. c. 139. U. K. provides, that if any person shall, within the united kingdom, coin or counterfeit any kind of coin, not the proper coin of this realm, nor ordered by royal proclamation to be taken as current money of this realm, or any part thereof, but resembling, or made with intent to resemble, any copper coin, or any other coin made of any metal or mixed metals of less value than the silver coin of such foreign prince, state, or country, or to pass as such foreign coin, such offender shall be deemed guilty of a misdemeanor and breach of the peace, and shall for the first offence be imprisoned for any time not exceeding one year, and for the second offence be transported for 7 years. And by s. 4. no person against whom any bill of indictment shall be found at any assizes or sessions of the peace, for any offence against this act, shall be entitled to traverse the same to any subsequent assizes or sessions, but the court at which such bill of indictment shall be found, shall forthwith proceed to try the person against whom the same shall be found, unless he shall shew good cause, to be allowed by the court, why his trial should be postponed. By s. 5. if any person shall be convicted of any offence against this act, and shall be afterwards guilty of the like offence in any other county or place, the clerk of the assize, clerk of the

Persons counterfeiting foreign copper coin, guilty of a misdemeanor. 43 Geo. 3. c. 139. s. 3. U. K.

Punishment.

s. 4.

No traverse in prox.

s. 5.

What certificate evidence of former conviction.

peace,

peace, or town-clerk, for the county, &c. where such former conviction shall have been had, shall, at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript, in a few words, containing the effect and tenor of such conviction, (for which certificate, 2s.6d. shall be paid) and such certificate being produced in court, and the hand writing of such clerk of assize, &c. thereto being proved, shall be sufficient evidence of such former conviction. By s. 6. if

s. 6.

Penalty on persons having more than 5 pieces of such counterfeit coin.

any person shall have in his custody, without lawful excuse, any greater number of pieces than 5 of such counterfeit coin as aforesaid, such person being thereof convicted upon the oath of one witness before one of his majesty's justices of peace, shall forfeit such counterfeit coin, which shall be destroyed by order of such justice, and shall forfeit any sum not exceeding 40s. nor less than 10s. for every such piece of counterfeit coin, which shall be found in the custody of such person; one moiety to the informer, and the other to the poor of the parish where such offence shall be committed; and in case such penalty shall not be forthwith paid, it shall be lawful for such justice to commit such person to the common gaol or house of correction, there to be kept to hard labour for the space of 3 calendar months, or until such penalty shall be paid. And by

s. 7.

Houses, &c. of suspected persons may be searched.

s. 7. it shall be lawful for any justice of peace, on complaint upon the oath of one person, that there is just cause to suspect, that any person is or hath been concerned in making or counterfeiting any such false foreign coin as aforesaid, by warrant under the hand of such justice, to cause the dwelling house or other place belonging to such suspected person, or where such person shall be suspected to carry on such making or counterfeiting, to be searched for such counterfeit coin, or for tools, implements, or materials for making the same; and if any such counterfeit coin, or any such tools, &c. shall be found in any place so searched, or if any such tools, implements, or materials, shall be found in the custody of any person not having the same by lawful authority, any person discovering the same, shall seize such

such

such counterfeit coin, tools, &c. and carry the same forthwith to a justice of peace of the county, &c. where the same shall be seized, who shall cause the same to be secured, and produced in evidence against any person who may be prosecuted for any of the offences aforesaid; and after any such counterfeit coin or tools, &c. shall have been produced in evidence, as well so much thereof as shall have been so produced, as every other part not made use of in evidence, shall forthwith by order of the court, (or by order of some justice of peace, in case there shall be no such trial) be defaced or destroyed, or otherwise disposed of as such court or justice shall direct.

By s. 8. no proceedings touching the conviction of any offender against this act, before any justice of peace,

s. 8.

shall be quashed for want of form, or removed by *certiorari*, or other writ or process, into any court of record at Westminster or Dublin. By s. 9. every action or suit

Proceedings not to be quashed for want of form, nor removeable.

for any thing done in pursuance of this act, shall be commenced within 3 calendar months after the fact committed, and shall be brought in the county or place where the cause of action shall arise; and the defendant may plead the general issue, &c. and shall have treble costs of verdict, nonsuit, discontinuance, or judgment upon demurrer.

s. 9.

Actions when and where to be brought.

Pleading.

Costs.

By the 5 & 6 Edw. 6. c. 19. Eng. if any person exchange coined gold or silver, or money, receiving or paying more in value for it, than the same shall be declared by the king's proclamation to be current for; the money so exchanged shall be forfeit, and the parties offending shall suffer imprisonment one year, and make fine at the king's pleasure; the one moiety of the coin forfeited to be to the king, and the other moiety to the party that seizeth the same, or will sue for it by action of debt, &c. in any court of record. And by the 7 & 8

Penalty for giving or receiving for money, more than the current price.

5 & 6 Edw. 6. c. 19. Eng.

W. 3. c. 10. s. 18. Eng. as amended by the 7 & 8 W. 3. c. 19. s. 12. Eng. no person shall utter or receive guineas at a higher rate than 22s. each, and proportionably for every greater or lesser piece of coined gold; and whosoever shall so offend, shall forfeit double the value of the gold received or paid, and £20. one moiety to the

7 & 8 W. 3. c. 10. s. 18. Eng.

7 & 8 W. 3. c. 19. s. 12. Eng.

Penalty for uttering or receiving guineas at a higher rate than 22s.

king

26 Geo. 3. c. 39.
s. 1. Ir.

Penalty for buying any guinea or half guinea for less than the legal currency, unless cut as herein.

king, and the other to the person who shall sue for the same by action of debt, &c. in any court of record. And it is enacted by the 26 Geo. 3. c. 39. Ir. that no person shall buy any guinea or half guinea for a less sum than the legal currency at the time the same shall be bought, (such legal currency of such guinea being at the present time, £1. 2s. 9d. and of such half-guinea, 11s. 4½d.) unless such guinea, or half-guinea, at the time the same shall be bought, being lighter than the legal weight, shall be cut, in the presence of the person buying, and person selling the same, in such manner that such cut be of the length of at least one quarter of the diameter of such guinea or half guinea; and any person offending contrary to this act, being convicted upon the oath of one witness, before any justice of peace of the county or city in which the offence shall be committed, shall forfeit not more than £20. nor less than £5. to be levied by distress and sale of goods, by warrant of such justice; one moiety to the person suing for the same, and the other to the poor of the parish where such offence shall be committed. And by s. 2. when any person shall be convicted of buying such light gold contrary to this act, to the amount of 20 guineas, it shall be lawful for the court to fine the person so convicted in any sum not exceeding £500. and to imprison such person until such fine be paid.

Penalty where the gold bought amounts to 20 guineas.

Copper coin not being legal coin, and counterfeit gold or silver coin, exported, &c. to the colonies, forfeited.
38 Geo. 3. c. 67.
s. 1. Eng.

By the 38 Geo. 3. c. 67. s. 1. Eng. all copper coin, not being the legal copper coin of this kingdom, and all counterfeit gold or silver coin, made or intended to resemble any gold or silver coin of this kingdom, or of any other country, which shall under any pretence or description be exported or shipped, or laden or put on board any ship, &c. for the purpose of being exported from this kingdom, to any of his majesty's islands or colonies in the West Indies or America, shall be forfeited, and recovered as other forfeitures respecting the revenue of the customs. And by s. 2. every person who shall so export, &c. or cause to be exported, &c. or shall have in his custody, in order to be exported, any such coin as aforesaid, shall forfeit £200. and double the value

Penalty on persons exporting it

of

of such coin, to be recovered by bill, suit, action, or information, in any court of record at Westminster.

By the 14 Geo. 3. c. 92. s. 1. Eng. the warden, master, and controller of the mint, with the assistance of the assay master, shall make one weight of the guinea, and also one weight of the shilling, according to the established standard of the mint, and also other weights, parts and multiples of the guinea and shilling, which weights, together with their report of the accuracy thereof, they shall transmit to the clerk of his majesty's council in waiting, to be laid before his majesty in council; and in case the said weights shall be approved of by his majesty in council, the same shall be the standard weights of the gold and silver coin of this realm, and the same shall be lodged in the joint custody of the warden, master, and controller of the mint. By s. 2. the said warden, master, and controller, with the assistance of the assay master, shall make exact duplicates or copies of the said standard weights, and of the parts and multiples thereof; and if any of the said duplicates shall hereafter, by any accident, be destroyed, lost, or impaired, the warden, &c. with the assistance of the assay master, shall in like manner make other exact duplicates, &c. all which duplicates or copies, shall be laid before his majesty in privy council, as before directed; and in case the same shall be approved of by his majesty in council, they shall then, by the said master, &c. be lodged in the custody of an officer, to be appointed by his majesty under his sign manual, during his royal pleasure, with a salary not exceeding £250. *per ann.* to be issued by the warden out of the coinage duties. By s. 3. it shall be lawful for the warden, master, and controller, once or oftener in every year, by warrant under their hands, to summon such officer, so appointed by his majesty, to appear before them, and produce the duplicates or copies, and the same to examine and compare with the standard weights lodged in the custody of the warden, &c. By s. 4. all weights to be made use of for weighing the said gold and silver coin, shall be regulated by the duplicates of the standard weights in the custody of the officer

Warden of the mint, &c. to make weights of a guinea and shilling, and multiples thereof
14 Geo. 3. c. 92. s. 1. Eng.

Which when approved of by the king in council, shall be standard weights.

s. 2

Duplicates to be made.

s. 3.

Warden, &c. to compare the duplicates yearly.

s. 4.

The weights to be stamped, and declared publicly.

officer before mentioned, and after having been tried and compared therewith, and found to be just, shall, in testimony thereof, be marked by the said officer with a stamp, to be approved of by the master of the mint; which stamp the said officer is to provide: and that the said impression may be known, the said officer shall publish a description of the same, by advertisements, in the London Gazette, 3 times at least before the 31st December 1774; and the said officer shall, upon application made to him, at all seasonable hours, stamp all weights to be used for weighing gold and silver coin, which shall be brought to him for that purpose, and which he shall find to be just, without delay: and no other weights but such as shall be just, according to the weights hereby directed, and shall be marked as before mentioned, shall be reputed to be true, or of any effect for determining the weight of the gold or silver coin. And by s. 5. if any person shall counterfeit any stamp, to resemble any stamp used in pursuance of this act, or shall counterfeit the impression of such stamp on any weight; or shall utter or sell any such weight with the impression of such counterfeit stamp thereupon, knowing the same to be counterfeited, or shall wilfully increase or diminish such weight after it has been stamped; or shall make use of any such weight in weighing the gold and silver coin, knowing the same to have been increased or diminished; such person shall, upon conviction before 2 justices, forfeit a sum not exceeding £50. at the discretion of the justices; one moiety to the king, and the other to the informer; and on default of payment, it shall be lawful for such justices to commit such offender to the common gaol, or house of correction, for any time not exceeding 3 months. By s. 6. nothing herein shall take away or abridge any rights granted by king James I. by letters patent to the master, wardens, and commonalty of the mystery of founders of London, and which they may lawfully claim or enjoy with respect to the sizing and marking all brass weights made within London, or 3 miles thereof, or which shall be sold or kept for sale, within London, or 3 miles thereof. Provided (s.7.)
the

s. 5.

Penalty on persons counterfeiting, selling or using forged stamps.

s. 6.

Saving for the London company.

s. 7.

the weights before directed to be made use of for weighing the gold and silver coin, after having been sized and marked according to the directions of the said charter, be carried to be ascertained and marked, as before directed, by the officer appointed by his majesty in pursuance of this act. By the 15 Geo. 3. c. 30. Eng. it shall be lawful for the officer appointed in pursuance of the 14 Geo. 3. c. 92. *supra*, to demand and receive from every person bringing weights to be stamped in pursuance of said act, not exceeding one penny for every 12 weights so stamped, before he delivers the same. There is no statute similar to these in Ireland.

*Proviso.*15 Geo. 3. c. 30.
Eng.*Fee of officer
for stamping
weights.*

By the 14 Geo. 3. c. 42. s. 1. Eng. all silver coin of this realm, or any money purporting to be such, which is not of the standard of the mint in weight and fineness, shall be prohibited to be imported or brought into Great Britain or Ireland, from foreign countries; and if any silver coin being, or purporting to be, the coin of this realm, exceeding £5. in amount, shall be found by any officer of the customs, on board any ship or vessel, in any port, &c. or in any boat or other vessel upon the water within the said kingdoms, or in the custody of any person coming directly from the water side, or, upon the information of any person, in any house or other place, on search there made in manner directed by the act of customs 13 & 14 Car. 2. c. 11. Eng. or any act in Ireland relative to searching for uncustomed goods, it shall be lawful for the officer to stop, &c. the same; and if upon examination it shall appear to the principal officer of the customs, to be of the standard weight and fineness, it shall be delivered to the owner without fee; otherwise it shall be seized by any of the officers of customs, and prosecuted in any court of record at Westminster or Dublin, or in the court of exchequer at Edinburgh; or if such coin shall not amount to the value of £20. the same may be prosecuted, in a summary way, before any 2 justices of peace for the county, &c. where such seizure shall be made, at the election of the commissioners of customs in Great Britain, or the commissioners of revenue in Ireland, or any 3 of them, in such manner as any forfeiture

*All coins not of
the established
standard, to be
seized and con-
demned.*14 Geo. 3. c. 42.
s. 1. Eng.

feiture

After condemnation to be melted down, &c.

Value how disposed of.

s. 2.

No tender in silver exceeding £25. legal for more than its value by weight.

feiture incurred by any law of the revenue may be sued for, &c. and after condemnation, the same shall be melted down, cut, or defaced, in such manner as the commissioners, &c. shall direct; and one moiety of the produce arising by the sale thereof, after being so melted down, &c. (deducting the charges of prosecution and sale) shall be to the king, and the other to such officer of customs as shall sue for the same. And it is a provision of this act, (s. 2.) that no tender made in the silver coin of this realm, exceeding £25. at any one time, shall be reputed a legal tender, within Great Britain or Ireland, for more than according to its value or weight, after the rate of 5s. 2d. for each ounce of silver. This act has not been recognized by any Irish statute.

The statutes regulating the standards of gold and silver wares, as also those regulating the sale of bullion, and restraining its exportation, do not fall within the scope of this work.

§ 2.

Conspiring to destroy the king's council, or great officers, felony.

3 Hen. 7. c. 14. E. & I.

II. Next as to felonies against the *king's council*, or great officers. By the 3 Hen. 7. c. 14. E. & I. the steward, treasurer, and controller of the king's house, or one of them, shall have power to inquire by 12 discreet persons of the cheque-roll of the king's household, if any servant sworn, and his name put into the cheque-roll, under the state of a lord, make any confederacies, compassings, conspiracies, or imaginations, with any person, to destroy or murder the king, or any lord of this realm, or any other person sworn to the king's council, steward, treasurer, or controller of the king's house; and if it be found before the said steward, by the said 12 men, that any such of the king's servants hath confederated, &c. as abovesaid, he shall be put to answer: And the steward, treasurer, and controller, or 2 of them, shall have power to determine the matter according to law. And if he put him in trial, it shall be tried by other 12 of the household, and such misdoers shall have no challenge, but for malice; and if such misdoers be found guilty, by confession or otherwise, the offence shall be judged felony. And by the 9 Ann. c. 16. s. 1. Eng. if any person shall unlawfully attempt to kill, or shall unlawfully strike or wound, any one of the most honourable

9 Ann. c. 16. s. 1. Eng.

ble privy council, when in the execution of his office of a privy counsellor in council, or in any committee of council, such offender shall be guilty of felony, without benefit of clergy.

To make an attempt on the life of a privy counsellor, while in execution of his office, a capital felony.

III. To prevent persons being perverted in their religion and loyalty, by *serving foreign states*, the 3 Jac. 1. c. 4. s. 18. Eng. enacts, that every subject of this realm, that shall pass out of this realm to serve any foreign prince or state, or shall pass over the seas, and there voluntarily serve any foreign prince, &c. not having first taken the oath of obedience herein contained, (for which the oaths of allegiance and supremacy are substituted by the 1 W. & M. st. 1. c. 8. Eng.) shall be a felon." And by s. 19. & 20. if any gentleman or person of higher degree, or any person which hath born any office of captain, lieutenant, or any other office in camp, army, or company of soldiers, shall pass out of this realm, to serve any foreign prince, &c. or shall voluntarily serve any such prince, &c. before he shall become bound by obligation with 2 sureties unto the king, in £20. at least, with condition to the effect following, he shall be a felon: "That if the within bounden, &c. shall not at any time then after be reconciled to the pope or see of Rome, nor shall enter into, or consent unto, any practice, plot, or conspiracy whatsoever, against the king's majesty, his heirs and successors, or any of his and their estate and estates, realms or dominions; but shall within convenient time after knowledge thereof had, reveal and disclose to the king's majesty, his heirs and successors, or some of the lords of his or their honourable privy council, all such practices, plots, and conspiracies; that then the said obligation to be void." And by s. 21. it shall be lawful for the customer and controller of every port, and none other, to receive such bond, and to give the oath, taking for such bond, 6*d.* and for the oath no fee; which customer, &c. shall register and certify every such bond and oath into the exchequer, once every year, upon pain of £5. for every bond, and 20*s.* for every oath. No statute in Ireland contains any similar clauses to those of the

§ 3.

Felony to go out of the realm to serve a foreign prince, without taking the oath of allegiance, &c.

3 Jac. 1. c. 4. s. 18. Eng.

s. 19. & 20.

Gentlemen, &c. going to serve a foreign prince, shall be bound with 2 sureties to the king, &c.

s. 21.

Duty of customs and controller thereon.

3 Jac. 1. *supra.* By the 9 Geo. 2. c. 30. s. 1. Eng. if any subject

9 Geo. 2. c. 30. s. 1. Eng.

Enlisting or procuring any person to enlist in foreign service, a capital felony.

s. 2.

Offences out of the realm, may be tried in any county in England.

s. 3.

Proviso as to persons making discovery, &c.

29 Geo. 2. c. 17.
s. 4. Eng.

Subjects contracting, &c. to enlist in foreign service, and persons engaging them, felons.

s. 1.

Accepting of any military commission, &c. in the French king's service, without leave under the sign manual, felony.

s. 5.

Subjects accepting commissions in the Scotch brigade, in the states general's service, to take the oaths, &c. on penalty of £500.

subject of Great Britain shall enlist or enter himself, or if any person shall procure any subject, &c. of the king to enlist, &c. or retain any subject with an intent to cause such person to enlist, or procure any subject, &c. to embark in order to be enlisted, to serve any foreign prince, state, or potentate, as a soldier, without license of his majesty, first had under the sign manual; such offender shall be guilty of felony, without benefit of clergy. And by s. 2. where any offence against this act shall be committed out of this realm, the same may be laid and tried in any county in England. But by s. 3. in case any person so enlisted, or enticed to go beyond the seas in order to be enlisted, as a non-commissioned officer or private soldier, shall, within 14 days, voluntarily discover upon oath before any civil magistrate, the person by whom he was so enlisted, or enticed, so as he may be apprehended and convicted, such person discovering shall be indemnified. And by the 29 Geo. 2. c. 17. s. 4. Eng. if any subject of Great Britain shall engage, contract, or agree, within Great Britain or Ireland, to go beyond the seas, or embark with an intent and in order to enlist and enter himself to serve as a soldier in a foreign service, though no enlisting money be paid to or received by him; or if any person shall hire, retain, engage, or procure, any subject of the king, (though no enlisting money shall have been paid to or received by him) to agree to go beyond the seas, or embark with an intent, &c. to be enlisted to serve any foreign prince, state, or potentate, as a soldier, without leave of the king first obtained, such offender shall be guilty of felony, without benefit of clergy. By s. 1. of this act, if any subject of Great Britain accept any military commission, or otherwise enter into the military service of the French king, as a commissioned or non-commissioned officer, without leave of the king under the sign manual, such offender shall be guilty of felony, without benefit of clergy. And by s. 5. if any of his majesty's British subjects, accept of commissions in the corps in the service of the states general of the united provinces, distinguished

* The clauses (s. 2. & 3.) of this act were of a temporary nature.

distinguished by the name of the Scotch brigade, (and who are not already in that service) every such person shall, within 6 months after the date of his commission, take and subscribe the oaths of allegiance and abjuration in one of the courts at Westminster, or at the general assizes, or general quarter sessions of the peace, for some county in England, or in the court of session, court of justiciary, court of exchequer in Scotland, or in a sheriff or stewart court, or before the justices of peace at their quarter sessions there, or in the dominions of the states general before his majesty's minister there; and every such officer shall, within 6 months after he has taken and subscribed such oaths, transmit a certificate thereof, signed by order of such court or person before whom the same shall have been so taken, together with an account of the date of his commission, to his majesty's secretary at war, who is to register the names of all such officers, and the dates of their commissions; and every such officer not now in the service of the states general, who shall accept of a commission in the corps aforesaid, and shall not take and subscribe the oaths aforesaid, and transmit a certificate thereof, shall forfeit £500. to be recovered by action of debt, &c. in any court of record at Westminster, or in the court of session or exchequer in Scotland; one moiety whereof shall go to the person who shall sue for the same, and the other moiety to his majesty, within one year after such offender shall come into Great Britain.

By s. 6. any offence against this act though committed without the realm, may be alleged to be committed, and may be tried in any county in Great Britain. And by

s. 6.

Offences out of the realm where tried.

s. 7. no attainder for any offence made felony by this act, shall make any corruption of blood, loss of dower, or disherison of heir. The 11 Geo. 2. c. 7. Ir. also enacts, that if any subject of the king, shall, within this kingdom, enlist or enter himself, or shall go out of the same beyond the seas, and enlist, or in order to enlist or enter himself, as a non-commissioned officer or private soldier in the service of any foreign prince, state, or potentate; or if any person shall, within this

s. 7.

No corruption of blood.

11 Geo. 2. c. 7. Ir.

Subjects enlisting in foreign service, or going beyond seas with the intent, or procuring or compelling subjects so to do, guilty of a capital felony.

kingdom

kingdom, enlist or persuade, prevail on, entice, or procure any subject, &c. to enlist or enter himself, or shall hire or retain any subject, &c. to go beyond the seas, or embark in order to be enlisted, or to enter himself as a non-commissioned officer or private soldier in any foreign service, without the license of the king under his sign manual, or of the chief governor of this kingdom under his hand and seal, to serve any such foreign prince, &c. or if any such person shall carry away by force out of this kingdom, any subject, &c. in order to persuade, prevail on, cause or compel such person to enlist or enter himself as a non-commissioned officer or private soldier, in the service of any foreign prince, &c. such offender shall be guilty of felony without benefit of clergy, &c.

s. 2.

And harbourers, &c. of such offenders; who may be tried before principal.

And by s. 2. every person who shall harbour, conceal, relieve, entertain, or transport beyond the seas, any such offender, or shall be aiding, abetting, or assisting therein, knowing him to be guilty of any such offence, shall be guilty of felony without benefit of clergy, &c. and may be tried for said felony, although the principal offender be not convicted or outlawed for the said felony. And by s. 3. no papist, or reputed papist, shall be capable of serving as a juror upon the trial of any such offender; and such person who shall prosecute in behalf of his majesty, may challenge any papist, &c. returned as a juror, and assign for cause that the person so returned is a papist, &c.; which challenge shall be deemed a principal challenge, and the judge before whom such offender shall be tried, shall allow the same.

s. 3.

Challenge lies to papists.

But this provision as to papists seems to be conditionally repealed by the 33 Geo. 3. c. 21. s. 1. & 14. Ir. *vide* vol. 1. p. 503..

s. 4.

Offences out of the kingdom where tried.

By s. 4. (of the 11 Geo. 2. c. 7.) where any offence against this act shall be committed out of this kingdom, the same may be laid and tried in any county in Ireland.

s. 5.

Persons so enlisting, &c. indemnified on discovering, &c. the person by whom he was enlisted, &c.

Provided (s. 5.) that in case any person so enlisted, or enticed, or inveigled to go beyond the seas in order to be enlisted, &c. in any foreign service, without license as aforesaid, shall, within 14 days after such enlisting or agreement, or in case any person so carried away by force out of this kingdom in order to be enlisted

enlisted, or that [shall be compelled to enlist or serve any foreign prince, &c. shall, within 2 months after his return to this kingdom, voluntarily discover upon oath, before a justice of peace, the person by whom he was so enlisted, &c. so as he may be convicted of said offence, he shall be indemnified from all penalties on account of said offence. And by the 25 Geo. 2. c. 12, 25 Geo. 2.c.12. s. 1. Ir. if any person shall be presented by the grand jury at any assizes or quarter sessions of the peace, for having enlisted, or used any means to seduce or prevail upon any person to enlist, or for having endeavoured to make any person enlist or serve as a soldier or non-commissioned officer, in any foreign service, without leave or license of the king under his sign manual, or of the chief governor of this kingdom under his hand, first had, and such presentment being returned to the clerk of the council, the person in such presentment named, shall by proclamation from the chief governor and council of this kingdom be proclaimed; and in case the person so presented and proclaimed do not, within the time limited by such proclamation, render himself to a justice of peace of the county where such presentment shall be made, he shall be convict of high treason; and every person knowingly concealing, aiding, abetting, or succouring such person so presented and proclaimed, &c. after the time so limited by such proclamation, shall be guilty of felony without benefit of clergy. And by s. 2. the printed proclamation wherein such person is named or mentioned to be presented by the grand jury of any county, or county of a city or town, at the assizes or quarter sessions to be guilty of the offences in s. 1. shall be sufficient evidence against such person. Provided (s. 3.) that before any grand jury shall present any person, examination shall be taken before some judge of the king's bench, judge of assize, or justice of the peace, upon oath, which examination shall be lodged with the clerk of the crown or peace for the county or place where such person shall be presented, and a copy thereof shall be certified, together

Persons presented at assizes or sessions for enlisting or seducing to enlist in foreign service, proclaimed:

And high treason not to render themselves in time.

Concealing, or abetting them, capital felony.

s. 2.

Printed proclamation, evidence.

s. 3.

Before presentment, examination on oath to be taken, &c.

with the presentment, to the chief governor and council before the person so presented shall be proclaimed.

§. 4.

Embezzling the king's armour or stores, felony.

31 Eliz. c. 4.
s. 1. Eng.

s. 2.

Limitation.

Forfeiture for life only.

No corruption of blood, &c.

22 Car. 2. c. 5.
s. 3. Eng.

Benefit of clergy taken away from such as embezzle the king's stores, &c.

s. 4.

Judges may transport such felons.

9 & 10 W. 3.
c. 41. Eng.

No warlike or naval stores shall be made with the king's marks, &c.

IV. Next as to the offence of *embezzling or destroying the king's armour or warlike stores*. By the 31 Eliz.

c. 4. Eng. if any person having the charge or custody of any armour, ordnance, munition, shot, powder or habiliments of war, of the crown, or of any victuals provided for the victualling of any soldiers or mariners, shall for gain, or wittingly, advisedly, and of purpose, to hinder or impeach her majesty's service, embezzle, purloin, or convey away any of the same armour, &c. to the value of 20s. at one or several times, such offence shall be felony. Provided (s. 2.) that none

shall be impeached for any offence against this statute, unless the impeachment be within the year after the offence. And this act shall not make the offenders forfeit any lands longer than during their lives, or make any corruption of blood, or loss of dower. And persons impeached for any offence made felony by this statute, shall be admitted to make any lawful proof by witness or otherwise for their defence. But by the 22 Car. 2. c. 5.

s. 3. Eng. no person who shall be indicted for any offence against the 31 Eliz. c. 4. *supra*, or shall feloniously steal or embezzle his majesty's sails, cordage, or other naval stores, to the value of 20s. and be thereupon found guilty by verdict, or shall confess the same, or will not answer, or shall stand obstinately mute, or challenge peremptorily above 20. or shall be outlawed, shall have the benefit of clergy. And by s. 4. the judges before whom such offender shall be condemned, may grant a reprieve, and cause such offender to be transported for 7 years and there to be kept to labour: and if such offender shall refuse to be transported, or shall return into England, Wales, or Berwick, within said time, he shall be put to execution upon the judgment. By the 9 & 10

W. 3. c. 41. Eng. it shall not be lawful for any person, (other than persons authorized by contracting with his majesty's principal officers or commissioners of the navy, ordnance, or victualling office, for his majesty's use,) to make any stores of war, or naval stores with the marks used upon his majesty's stores, *viz.* cordage of 3 inches

and

and upwards, wrought with a white thread laid the contrary way, or smaller cordage, *viz.* from 3 inches downwards, with a twine in lieu of a white thread, laid the contrary way, or any canvas with a blue streak in the middle, or any other stores with the broad arrow; upon pain that such person shall forfeit such goods, and £200. with costs, one moiety to his majesty, and the other to the informer, to be recovered by action of debt, &c. in any court of record at Westminster. And it was enacted by s. 2. that such person in whose custody such stores marked as aforesaid should be found, and persons who should conceal such stores, being indicted and convicted of such concealment, or of the having such goods in keeping, should forfeit such goods, and £200. with costs, one moiety to his majesty, and the other to the informer, and should also suffer imprisonment until payment of the forfeiture; unless such person should upon his trial, produce a certificate of 3 principal officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods, and the reason of such goods coming to his hands. And it was also enacted by the 9 Geo. 1. c. 8. s. 3. Eng. that if any person should be convicted of having in his custody any timber, thick stuff, or plank, marked with the broad arrow, or of concealing any timber, &c. so marked, he should suffer and forfeit as for concealing any other stores contrary to the 9 & 10 W. 3. c. 41. *supra*. And by the 17 Geo. 2. c. 40. s. 10. Eng. it was provided, that it should be lawful for any judge, justice or justices at the assizes, or justices of peace at the quarter sessions, to try and determine by indictment or otherwise, the offences mentioned in the 9 & 10 W. 3. c. 41. and the 9 Geo. 1. c. 8. *supra*, and that the said judge, &c. before whom such offender was indicted, or tried and convicted of the offences in the said acts mentioned, might impose any fine, not exceeding £200. on such offender; one moiety to be paid to his majesty, and the other to the informer; and that they might mitigate the penalty, and commit the offender until payment; or in lieu thereof punish such offender corporally, by causing him to be publicly whipped, and committed

Penalty.

s. 2.

Penalty on person in whose custody such marked stores are found, &c.

9 Geo. 1. c. 8. s. 3. Eng.

Persons having in their custody timber, &c. marked with the broad arrow, liable to the penalties of the 9 & 10 W. 3.

17 Geo. 2. c. 40. s. 10. Eng.

*Who may try offences relating to stores, &c.**Discretion as to punishment.*

39 & 40 Geo. 3.
c. 89. Eng.

*Every person
(not being a con-
tractor, &c.)
who shall sell or
receive any stores
of war, &c. or
conceal them,
shall be trans-
ported for 14
years.*

s. 2.

*Punishment of
persons in whose
custody canvas
or bunting,
marked as here-
in, &c. shall be
found.*

*Amendment of
9 & 10. W. 3.
c. 41.*

to some house of correction, or workhouse, to be kept to hard labour for 3 months, or less time. But by the 39 & 40 Geo. 3. c. 89. Eng. every person (such person not being a contractor, or employed as in the 9 & 10 W. 3. *supra*, is mentioned) who shall willingly or knowingly sell or deliver, or cause or procure to be sold, &c. to any person, or who shall willingly and knowingly receive or have in his custody, possession, or keeping, any stores of war, or naval, ordnance, or victualling stores, or any goods marked as in the 22 Car. 2. c. 5. 9 & 10 W. 3. c. 41. and 9 Geo. 1. c. 8. (herein recited) are expressed, or any canvas marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bewper otherwise called buntin, wrought with one or more streaks of raised tape, (the said stores of war, or naval, ordnance, or victualling stores or goods abovementioned, being in a raw or unconverted state, or being new or not more than one third worn;) and such person who shall conceal any of such stores or goods, marked as aforesaid; shall be deemed receivers of stolen goods, knowing them to be stolen, and shall, on being convicted in due form of law, be transported for 14 years, unless such person shall upon his trial produce a certificate under the hands of 3 or more of the principal officers or commissioners of the navy, ordnance, or victualling, expressing the numbers, quantities, or weights of such stores or goods as he shall be then indicted for, and the occasion and reason of their coming to his hands or possession. And by s. 2. such person (not being a contractor or employed as aforesaid) in whose custody, &c. any of the said stores called canvas, marked with a blue streak in a serpentine form, or bewper otherwise buntin, wrought as abovementioned, shall be found, (such canvas or bewper not being charged to be new, or not more than one third worn) and every person who shall be convicted of any offence contrary to so much of the 9 & 10 W. 3. as relates to the making, or the having in possession, or concealing any of his majesty's stores, marked as therein specified, shall, besides forfeiting such stores, and the sum of £200. with

with costs of suit, as therein mentioned, be punished by pillory, whipping, and imprisonment, or by any or either of said ways, in such manner, and for such time, as to the judge or justices before whom he shall be convicted, shall seem meet; provided that such judge or justices may mitigate said penalty of £200. as he or they shall see cause. Provided (s. 3.) that nothing in this act, or in the 9 & 10 W. 3. shall extend to exempt any

s. 3.

person being a contractor or employed as in the 9 & 10 W. 3. mentioned, except only so far as

Proviso as to contractors.

concerns stores or goods marked as aforesaid, which shall be, *bona fide*, provided, made up, or manufactured by such persons, or by their order, and which shall not have been before delivered into his majesty's store, unless having been so delivered they shall have been sold or returned to such person by the commissioners of his majesty's navy, ordnance, or victualling, respectively. By s. 4. if any person shall wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the marks

s. 4.

in the said 9 & 10 W. 3. or in this act mentioned, or any other mark denoting the property of the king, in or to any warlike, naval, ordnance, or victualling stores, or cause, procure, employ, or direct any other person so to do, for the purpose of concealing his majesty's property in such stores, such person shall be guilty of felony, and shall be transported for 14 years. And by s. 5. if any person who shall be convicted of any offence contrary to this act, for which he shall not have been

Persons defacing marks of king's stores, &c. transported for 14 years.

s. 5.

transported, or contrary to the 9 & 10 W. 3. shall be guilty of a second offence, contrary to that act, or to this act, which would not otherwise subject him to transportation, such person shall be transported for 14 years.

Punishment of person convicted of a second offence, which would not at first subject him to transportation.

And by s. 6. if any person transported in pursuance of this act, shall return into Great Britain or Ireland, before the expiration of the term for which he shall have been so transported, he shall suffer as a felon without benefit of clergy. Provided (s. 7.) that it shall be lawful

s. 6.

Returning from transportation a capital felony.

for the court before whom any offender shall be indicted and convicted of any of the crimes herein before men-

s. 7.

What punishment may be substituted for transportation.

tioned

Reward for persons first discovering offenders guilty of stealing his majesty's stores, &c.

s. 8.

tioned to be punishable with transportation, to mitigate or commute such punishment, by causing the offender to be set on the pillory, publicly whipped, fined or imprisoned, or by all or any of the said ways, as the said court shall think fit; one moiety of which fine, (if any imposed) shall be to the king, and the other to the informer, and also to order such offender to be imprisoned until such fine be paid. And by s. 8.

if any person shall discover to the principal officers or commissioners of the navy, ordnance, or victualling, or apprehend or first inform against any offender who shall have been guilty of stealing his majesty's stores of war, or naval, ordnance, or victualling stores, or of any of the offences mentioned in the 9 & 10 W. 3. or in this act, which shall not be prosecuted in the summary way herein after prescribed, such discoverer, &c. shall receive a reward of £20. above any share of the penalty or fine which he may be entitled to as informer; so as such share do not amount to more than £20. or (if amounting to more than that sum) shall fail to be paid by the offender for 3 calendar months after his conviction; provided such offender shall not be detained in pursuance of any sentence of imprisonment, and if so detained such share of penalty, &c. shall fail to be paid within 3 calendar months after the expiration of such sentence. And by

s. 9.

Disputes between claimants how determined.

s. 9. if any dispute shall arise as to the title of said reward, it shall be determined by one or more of the commissioners of his majesty's navy, ordnance, or victualling, as the offence may have related to their departments respectively, upon the oaths of the claimants, to be taken in writing before such commissioner, or before a justice of peace. This statute (as well as the 9 & 10 W. 3. c. 41. and 1 Geo. 1. c. 25. Eng.) contains several other provisions in respect to the jurisdiction and authority of the commissioners of the navy, ordnance, or victualling, and of justices of peace also, for discovering and seizing stores concealed, apprehending persons suspected of having stores stolen from his majesty's ships, &c. and for determining complaints for unlawfully selling or receiving stores not exceeding 20s. value: And provides (s. 24.) that nothing herein contained which gives

gives to any commissioner or justice of peace, a power s. 24.
to hear and determine offences in a summary way, shall
extend to prevent the party accused of selling or deliver- *Notwithstanding*
ing, or having in his custody, or of receiving or conceal- *summary juris-*
ing any of the stores marked as aforesaid, under the *isdiction hereby*
value of 20s. from being prosecuted as receivers of stolen *given as to of-*
goods under this act, or for unlawfully having the same *fences under 20s*
in his custody, or concealing the same, under the 9 & 10 *the offenders*
W. 3. c. 41. 9 Geo. 1. c. 8. or 17 Geo. 2. c. 40. in any *may be prosecut-*
court of record, *oyer* and *terminer*, or otherwise; so as *ed as receivers*
the same person shall not be punished twice for the same *of stolen goods.*
offence. No statute in Ireland provides for this offence
of embezzling the king's stores.

By the 12 Geo. 3. c. 24. Eng. if any person shall *Persons who*
within this realm, or in any of the islands, countries, *shall wilfully*
forts, or places thereto belonging, wilfully and mali- *burn ships of*
ciously set on fire, or burn or otherwise destroy, or cause *war, or materi-*
to be set on fire, &c. or aid, procure, abet, or assist *als for building*
in the setting on fire, &c. any of his majesty's ships or *them, or stores*
vessels of war, whether the said ships, &c. be on float *in dock-yards,*
or building, or begun to be built, in any of his majesty's *&c. guilty of a*
dock yards, or building or repairing by contract in any *capital felony.*
private yards, for the use of his majesty's arsenals, ma- *12 Geo. 3.c.24.*
gazines, dock yards, rope yards, victualling offices, or *s. 1. Eng.*
any of the buildings erected therein, or belonging
thereto; or any timber or materials there placed for
building, repairing, or fitting out of ships or vessels;
or any of his majesty's military, naval, or victualling
stores, or other ammunition of war; or any place where
such stores, &c. are placed; such person shall be guilty
of felony without benefit of clergy. And by s. 2. any s. 2.
person who shall commit any of the said offences out of
this realm, may be indicted and tried for the same, *Offences out of*
either in any shire within this realm, or in such place *the realm where*
where such offence shall have been committed, as the *tried.*
king shall deem most expedient. No similar statute has
been made in Ireland.

§ 5.

V. Next as to the crime of *desertion*: By the 18 Hen. 6. *Felony for a sol-*
c. 19. E. & I. every man mustering and receiving the *dier not to go*
king's wages, which departeth from his captain within *with or depart*
his term, as by not passing the sea with his captain, *from his captain*
except *without license.*
18 Hen. 6. 19.
E. & I.

except that notorious sickness or impediment by the visitation of God, suffer him not to go, (and which he shall immediately certify to his captain, and shall repay his money so that he may provide another soldier,) shall be punished as a felon; and the justices of peace shall have power to inquire thereof. And no soldier, man of arms, or archer, mustered of record, and going with his captain beyond the sea, shall return into England within the term for which his captain hath retained him, nor leave his captain there in the king's service, and in adventure of war, except that he hath reasonable cause, and by him notified to the chief in such country having royal power, and thereupon shall have license of the said chieftain, under his seal, testifying the cause of his license. And he that cometh without such letters testimonial, shall be put in arrest by the mayors, bailiffs, and other the king's ministers, at the port or place where he shall arrive; and if it be found by inquiry before justices of peace, and proved that he had so mustered of record, and departed from his captain without license, he shall be punished as a felon. And the 5 Eliz. c. 5. s. 27. Eng. declares, that this statute of Henry VI. shall extend to every mariner and gunner who shall take prest or wages to serve the queen, &c. By the 7 Hen. 7. c. 1. E. & I. if any soldier, being no captain, immediately retained with the king, which shall be in wages and retained, or take any prest to serve the king upon the sea, or upon the land beyond the sea, depart out of the king's service without license of his captain, he shall be guilty of felony without benefit of clergy. And all justices of peace in every shire in England, shall have power to inquire of said offences, as though said offences were done in the same shire. The 2 & 3 Edw. 6. c. 2. s. 6. Eng. also enacts, that if any soldier depart without license of the lieutenant, high admiral, king's deputy, vice admiral, warden, or captain, and in their absence any of their deputies, with booty or otherwise, being in the enemy's country, or elsewhere in the king's service, or out of any garrison, such soldier shall be judged as a felon without advantage of his clergy; and the justices

5 Eliz. c. 5.
s. 27. Eng.

*Extended to
mariners and
gunners.*

7 Hen. 7. c. 1.
E. & I.

*Clergy taken
away.*

2 & 3 Edw. 6.
c. 2. s. 6. Eng.

*Capital felony
for any soldier
to depart without
license, &c.*

justices of every shire where such soldiers shall be taken, shall have power to inquire, &c. of such offences as in other cases of felony. And this clause is recited, revived, and confirmed by the 4 & 5 Ph. & M. c. 3. 4 & 5 Ph. & M. c. 3. s. 9. Eng. s. 9 Eng. the 1 Mar. st. 1. c. 1. Eng. having repealed all statutes creating felonies, which were passed since the 1st year of the reign of king Henry VIII.

VI. *Seducing the king's soldiers or seamen from their allegiance*, is an offence in respect to which the § 6. 37 *Seducing the king's soldiers or seamen from their allegiance a capital felony.* Geo. 3. c. 70. Eng. provides, that any person who shall maliciously and advisedly endeavour to seduce any person serving in his majesty's forces by sea or land, from his duty and allegiance to his majesty, or to incite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall be guilty of felony without benefit of clergy. And by s. 2. any offence against this act, whether on the high seas, or within [*England,] shall and may be tried before any court of *oyer and terminer* or gaol delivery for any county in [*England.] But by s. 3. any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be prosecuted for the same offence as high treason, or misprision of high treason; and nothing in this act shall prevent any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of treason. The 37 Geo. 3. c. 40. s. 2. *Offences on the seas where tried.* s. 3. *This act shall not prevent persons from being tried for treason, or misprision, who have not been tried under it.* Ir. is a corresponding statute. 37 Geo. 3. c. 40. Ir.

It is one of the provisions of the 2 & 3 Ann. c. 20. Felony for officer or soldier beyond sea to raise any mutiny, &c. 2 & 3 Ann. c. 20. s. 35. Eng. Eng.† that if any officer or soldier of her majesty's army, either upon land out of England, or upon the sea, shall raise any mutiny or sedition in the army, or shall refuse to obey his superior officer, or shall resist any officer in the execution of his office, or shall strike, draw, or offer to draw, or lift up any weapon against his superior officer, upon any pretence, he shall be guilty of felony; and such offender being thereof convicted, or being indicted † Vide p. 473.

* "This kingdom" in 37 Geo. 3. c. 40. Ir.

s. 41.

No attainder to corrupt the blood, &c.

§ 7.

Persons administering unlawful oaths, or taking them voluntarily, guilty of felony.

37 Geo. 3. c. 123. s. 1. Eng.

s. 2.

Persons compelled to take such oaths not excused, unless they declare the same within 4 days.

s. 3.

indicted or arraigned thereof, and standing mute, or challenging peremptorily above 20, shall suffer death as in cases of felony. Provided (s. 41). that no attainder or any crime made felony by this act, shall make any corruption of blood to any heir, or debar the wife of her dower.

VII. By the 37 Geo. 3. c. 123. Eng. any person who shall, in any manner or form, administer, or cause to be administered, or be aiding or assisting at, or present at and consenting to the administering or taking of any oath or engagement, purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose; or to disturb the public peace; or to be of any association, society, or confederacy, formed for any such purpose; or to obey the orders or commands of any committee or body of men not lawfully constituted; or of any leader or commander, or other person not having authority by law for that purpose; or not to inform or give evidence against any associate, confederate, or other person; or not to reveal or discover any unlawful combination or confederacy; or not to reveal, &c. any illegal act done or to be done; or not to reveal, &c. any illegal oath or engagement which may have been administered, or tendered to, or taken by such person, or to or by any other person, or the import of any such oath, &c.; shall be guilty of felony, and be transported for any term of years not exceeding seven. And by s. 2. compulsion shall not excuse any person, unless he shall, within 4 days after taking such oath, &c. if not prevented by force or sickness, and then within 4 days after such hindrance shall cease, declare the same, with the whole of what he shall know touching the same, and the person by whom, and in whose presence, and when and where such oath, &c. was administered or taken, by information upon oath before one of his majesty's justices of peace, or one of his principal secretaries of state, or of his privy council; or in case the person taking such oath, &c. shall be in his majesty's service by sea or land, then by such information on oath as aforesaid, or by information to his commanding officer. By s. 3. persons aiding and assisting at, or present at and consenting to, the administering or taking of any such

such oath or engagement as aforesaid, and persons *Persons aiding, &c. though not present, deemed principals.* causing such oath, &c. to be administered, &c. though not present at the administering, &c. thereof, shall be deemed principal offenders, and tried as such, although the person who actually administered such oath &c. if such there be, shall not have been tried or convicted. And by s. 4. it shall not be necessary in any indictment s. 4. against any person administering, or causing to be administered or taken, or taking any such oath, &c. or *In indictments it shall be sufficient to set forth the purport of the oaths.* aiding or assisting at, or present at and consenting to the administering or taking thereof, to set forth the words of such oath, &c. and it shall be sufficient to set forth the purport, or material part thereof. By s. 5. any engagement s. 5. or obligation, in the nature of an oath, shall be deemed an oath within the meaning of this act, in whatever form or manner the same shall be administered or *Engagement in the nature of an oath to be deemed one.* taken; and whether the same be actually administered, or taken without any administration. By s. 6. any offence s. 6. against this act committed on the high seas, or out of this realm, or within England, shall and may be prosecuted, tried, and determined, before any court of *Where offences may be prosecuted.* *oyer and terminer*, or gaol-delivery for any county in England, as if such offence had been therein committed; and if committed in Scotland shall be prosecuted, &c. either before the justiciary court at Edinburg, or in any of the circuit courts in that part of the united kingdom. By s. 7. any person who shall be tried for s. 7. any offence against this act, shall not be liable to be prosecuted again for the same offence or fact, as high *Persons tried under this act, not to be tried as for high treason, &c.* treason, or misprision of treason; and nothing in this act shall prevent any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason or misprision of treason. The 36 Geo. 3. c. 20. Ir. (amended by subsequent statutes) contained clauses nearly corresponding. But these 36 Geo. 3. c. 20. Ir. insurrection acts of Ireland, have been lately repealed. The 27 Geo. 3. c. 15. Ir. however enacts (s. 6.) that 27 Geo. 3. c. 15. s. 6. Ir. any person not duly qualified by law to administer oaths, who shall administer, or cause to be administered, *Persons administering unlawful oaths to be transported for life.* or tender, or cause to be tendered to, or by threats, promises

*Persons taking
them transported
for 7 years.*

s. 7.

*Not necessary in
indictment to set
forth the form of
oath:*

*Nor in indict-
ment for admin-
istering to set
forth the name
of the person
taking it.*

s. 12.

Limitation.

promises, persuasion, or other undue means, cause, induce, or procure to be taken by any person, any unlawful oath, or solemn engagement upon a book or otherwise, shall be guilty of felony, and may be transported for life; and every person who shall take any such oath, &c. not being thereto compelled by inevitable necessity, shall be guilty of felony, and suffer as a felon, and may be transported for 7 years. And by s. 7. where any indictment shall be found against any person for administering, &c. any unlawful oath, &c. or against any person who shall take any such oath, &c. it shall not be necessary in any such indictment, to set forth the form of words made use of in such oath, &c. but it shall be sufficient to set forth the general import of such oaths, &c.; and where any indictment shall be found against any person for administering, &c. any such unlawful oath, &c. it shall not be necessary to set forth the name of the person to whom such oath, &c. was tendered, or by whom such oath, &c. was taken. Provided (s. 12.) that no person shall be prosecuted by virtue of this act, unless such prosecution be commenced within one year after the offence committed.

CHAP. V.

Of *Præmunire*.

*No abbot shall
send any thing
to his superiors
beyond sea.*

35 Edw. 1. st. 1.
c. 2. E. & I.

THE 35 Edw. 1. st. 1. E. & I. may be here stated, as laying the foundation of the subsequent statutes of *præmunire*. This statute enacted (c. 2.) that no abbot, or other religious person, being under the king's jurisdiction, should by any device or means send any tax to their superiors out of this kingdom or dominion; nor depart into any other country for visitation, or upon any other pretence, by that means to carry the goods of their

their monasteries and houses out of the kingdom, &c.; upon pain of being grievously punished according to the quality of such offence: And by c. 3. that no abbot or governor of a religious house, being an alien, should impose any charge or burden upon such religious house, upon pain of forfeiting all that he had or might have to forfeit. And this statute was confirmed by the 4 Edw. 3. c. 6. E. & I. and 5 Edw. 3. c. 3. E. & I. And it was further enacted by the 25 Edw. 3. st. 5. c. 22. E. & I. that any person purchasing a provision in the court of Rome for an abbey or priory, should be out of the king's protection, and that any man might do with him, as with the king's enemy. But since the dissolution of monasteries and other religious houses, the 25 Edw. 3. st. 6. E. & I. has been considered as the leading statute in respect to this offence of *præmunire*. This statute enacts, that the free elections of arch-bishops, bishops, and all other dignities and benefices elective, shall stand as they were granted by the king's progenitors, and by the ancestors of other founders: and all prelates and other people of holy church, which have advowsons of benefices of the king's gift, or of other donors, shall have their collations and presentations freely in the manner as they were infeoffed: and in case any reservation, collation, or provision, be made by the court of Rome, of any archbishoprick, bishoprick, dignity, or other benefice, in disturbance of the elections, collations, or presentations aforenamed, the king shall have for the time the collations to the archbishopricks, and other dignities elective, which be of his advowry, as his progenitors had before free election was granted. And if any collation, reservation, or provision, be made by the court of Rome, of any church, prebend, or other benefice, which be of the advowry of people of holy church, whereof the king is advowee paramount immediate at the time of the voidance, the king shall have the presentation or collation for that time. And in the same manner every other lord shall have the collations or presentations which be of his advowry. And if such advowees do not present to such benefices within the half year, nor the bishop of the

c. 3.

No impositions shall be taxed by priors aliens.

4 Edw. 3. c. 6. E. & I.

5 Edw. 3. c. 3. E. & I.

25 Edw. 3. st. 5. c. 22. E. & I.

Penalty of purchasing a provision in Rome for an abbey, &c.

25 Edw. 3. st. 6. E. & I.

Elections to the dignities of the church shall be free, and patrons and founders shall have the collation or presentation to them.

Where the pope maketh collation to a benefice, the king shall present.

*Penalties of
those who by
provisions from
Rome disturb
such present-
ments or colla-
tions.*

3 Ric. 2. c. 3.
E. & I.

*None shall take
any benefice of
an alien, or con-
vey money to
him.*

the place do not give the same by lapse of time, within a month after, the king shall have the presentations and collations. And in case the presentees of the king, or of other patrons of holy church, or of their advowees, or they to whom the king or such patrons have given benefices, be prevented by such provisors, or that they which be in possession of such benefices, be impeached by such provisors; the said provisors, their procurators, executors, and notaries, shall be attached by their body, and brought in to answer: and if they be convict, they shall abide in prison till they have made fine and ransom to the king at his will, and gree to the party grieved; and before that they be delivered, they shall make renunciation, and find surety, that they shall not attempt such things in time to come, nor sue any process by them, nor others, against any man in the court of Rome nor elsewhere, for such imprisonments. And by s. 5. in case such provisors, &c. be not found, the *exigent* shall all run against them; and writs shall go forth to take their bodies, as well at the king's suit, as at the suit of the party: And in the mean time the king shall have the profit of such benefices, except houses which have colleges, and in such houses the colleges shall have the profits: Saving to the king and other lords, their old rights. By the 3 Ric. 2. c. 3. E. & I. none shall take procuracy, letters of attorney, nor farm, nor other administration, of any benefice within the realm, but only of the king's people of the realm, without the license of the king by the advice of his council. And none shall send by virtue of such procuracy, &c. gold, silver, nor other treasure or commodity, out of the realm, to the profit of the aliens, without like license of the king by advice of his council; and if any do the contrary, he shall incur the pain contained in the statute of provisors 27 Edw. 3. st. 1. c. 1. (*post* p. 528.) by warning to be made to them within the realm: And if they be out of the realm and not beneficed, nor having possession within the realm where they may be warned, a writ shall be made in chancery, grounded upon this ordinance, to the sheriff of London, or to the sheriff of the county
in

in which they were born, at the king's suit, returnable in the one bench or the other, by which writ it shall be commanded, that proclamation be made that they be before the justices in the bench where the writ is returnable, at a day comprised in the writ, containing the space of half a year, to answer upon the matters comprised in the writ, and after this writ returned, the justices shall proceed. And no bishop nor other person of holy church, shall meddle with the fruits of such benefices given to aliens, to the profit of the same aliens, at his peril. And by the 7 Ric. 2. c. 12. E. & I. if any alien purchase any benefices of holy church, or other thing, and in person 7 Ric. 2. c. 12. E. & I. take possession of the same, or occupy it himself within the realm, without special license of the king, he shall be comprised within the statute 3 Ric. 2. c. 3. and shall incur all forfeitures ordained by the 25 Edw. 3. st. 6. No alien shall purchase or occupy any benefice of the church within the realm. (*ante* p. 525.) And the king commandeth that all shall abstain to pray him for any such license. And by the the 12 Ric. 2. c. 15. E & I. no liege man of the king shall pass over the sea, nor send out of the realm, without special leave of the king himself, to provide for himself a benefice of holy church in the realm; and if any do, and by virtue of such provision accept any benefice of the realm, the same provisor shall be out of the king's protection, and the benefice void. 12 Ric. 2. c. 15. E. & I. And by the 13 Ric. 2. st. 2. c. 2. E. & I. concerning archbishops, bishops, and other dignities and benefices elective, and all other benefices of holy church, which shall be void within England, the 25 Edw. 3. st. 6. shall be put in due execution; and if any make acceptation of any benefice contrary to this statute, and be beyond the sea, he shall abide banished out of the realm for ever, his lands, tenements, and goods, being forfeit to the king; and if he be within the realm, he shall be also banished, and shall incur the same forfeiture, and take his departure, so that he be out of the realm within 6 weeks after such acceptation; and if any receive any such person banished, after the 6 weeks, knowing thereof, he shall be banished, and incur such forfeiture as aforesaid. And their procurators, notaries, executors, and summoners, shall suffer the pain aforesaid. 13 Ric. 2. st. 2. c. 2. E. & I. And by Penalty for accepting a benefice contrary to the 25 Edw. 3. st. 6.

s. 2.

*Penalty of suing
to Rome, to in-
fringe this
statute.*

7 Hen. 4. c. 8.
E. & I.

*No provision,
&c. shall be
granted of a be-
nefice full.*

3 Hen. 5. st. 2.
c. 4. E. & I.

*Penalty for mo-
lesting any in-
cumbent by co-
lour of such pro-
vision.*

2 Hen. 4. c. 3.
E. & I.

*Penalties for ac-
cepting a provi-
sion from the
pope to be ex-
empt from
obedience.*

2 Hen. 4. c. 4.
E. & I.

*Penalty for pur-
chasing bulls to
be discharged
from tithes.*

*Præmunire for
suing in a for-
eign realm, or
impeaching of
judgment given.*

27 Edw. 3. st. 1.
c. 1. E. & I.

s. 2. if the king send to the court of Rome at the intercession of any person, or if any other send, to pray to the same court, whereby any thing be done contrary to this statute, touching any bishoprick, &c. within the realm; if he that maketh such motion or prayer be a prelate, he shall pay to the king the value of his temporalities of one year; and if he be a temporal lord, he shall pay the king the value of his lands of one year; and if he be of more mean estate, he shall pay the king the value of the benefice for which suit is made, and be imprisoned 1 year. By the 7 Hen. 4. c. 8. E. & I. no license or pardon of provision, shall be available to any benefice full of any incumbent at the day of the date of such license or pardon. And by the 3 Hen. 5. st. 2. c. 4. E. & I. if any feel himself grieved by colour of such provisions, licenses, or pardons, the molesters shall incur the penalties in the statute of provisors, by process of *præmunire facias*; and the party which shall sue by the same writ, shall recover his treble damages. By the 2 Hen. 4. c. 3. E. & I. if any provision be made by the pope to be exempt from obedience ordinary, if such provisors accept any such provision, they shall incur the pains in the statute of provisors, 13 Ric. 2. st. 2. And by the 2 Hen. 4. c. 4. E. & I. the religious of the order of Cisteaux, having purchased bulls to be discharged to pay tithes of their lands let to farm; as well they, as all other which put the said bulls in execution, or do purchase other such bulls, or by colour of the same take advantage, shall have process made against them by garnishment of 2 months by writ of *præmunire facias*; and if they make default or be attainted, they shall incur the pains in the 13 Ric. 2. st. 2.

The 27 Edw. 3. st. 1. c. 1. E. & I. (commonly called the statute of provisors) enacts, that all the people of the king's ligeance which draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or of things whereof judgments be given in the king's court, or which sue in any other court, to defeat or impeach the judgments given in the king's court, shall have day, containing the space of 2 months, by warning to

to be made them in the place where the possessions be, or where they have lands, by the sheriffs or other the king's ministers, to be before the king and his council, or in his chancery, or before the king's justices of the one bench or the other, or before other the king's justices, to answer in their proper persons to the king, of the contempt done: and if they come not at the day in their proper persons, they, their procurators, attornies, executors, notaries, and maintainers, shall be put out of the king's protection, and their lands and goods forfeit to the king, and their bodies shall be imprisoned, and ransomed at the king's will; and a writ shall be made to take them by their bodies, and seize their lands, goods, and possessions, into the king's hands; and if it be returned, that they be not found, they shall be put in *exigent*, and outlawed. Provided (s. 2.) that at what time they come before they be outlawed, and will yield them to the king's prison, to be justified by the law, they shall be thereto received; the forfeiture of the lands, &c. abiding in force, if they do not yield them within the 2 months. The 38 Edw. 3. st. 1. c. 4. E. & I. recites, that people be bound in another court out of the realm, by instruments, and in other manner, and enacts, that all such penal bonds in the third person shall be void. The 38 Edw. 3. st. 2. c. 1. E. & I. confirms the provisions made by the 25 Edw. 3. and 27 Edw. 3. saving the estate of the prelates and other lords, touching the liberty of their bodies, so that by force of this statute their bodies be not taken: and further provides, that all they which shall purchase or pursue personal citations against the king, or any of his subjects; and also they that shall obtain in the court of Rome, deaneries, archdeacons, provosties, and other benefices of holy church, pertaining to the collation or disposition of the king, or of other lay patron; and also all obtainers of churches, offices, or benefices of holy church, pensions, or rents appropriated to churches, cathedral or collegiate, hospitals or other poor houses, before such appropriations and amortisements be avoided by due process; and also all they which shall obtain benefices, whereby prejudice may be done to the king or to his subjects, or

s. 2.

Appearance after 2 months will save outlawry, but not forfeiture.

38 Edw. 3. st. 1. c. 4. E. & I.

Penal bonds in the 3d person, void.

38 Edw. 3. st. 2. c. 1. E. & I.

Persons receiving citations from Rome, shall incur the penalties of the 25 Edw. 3. st. 6.

to the laws and liberties of this realm, and of his crown ; and all their maintainers, counsellors, abettors, aiders and fautors, willingly, as well at the suit of the king as of the party, or other of the realm finding pledges to pursue all the said persons defamed or violently suspected of such impetrations or pursuits, shall be arrested by the sheriffs and justices, and other the king's ministers, and put in bail, and shall be presented to the king and his council, to stand to right ; and if they be convict of any of the said things, they shall have the pain comprised in the 25 Edw. 3. st. 6. *supra*. And by

38 Edw. 3. st. 2.
c. 2. E. & 1.

Suspected persons not appearing before the king's justices, to incur the penalty of
27 Edw. 3. st. 1.
c. 1.

c. 2. if any persons defamed or suspect of the said impetrations, &c. cannot be attached, and do not present themselves before the king, or his council, within 2 months after they be warned in any of the king's courts, or in the counties, or before the king's justices in their sessions, to answer to the king and to the party, to be at the law, they shall be punished by the form comprised in the 27 Edw. 3. st. 1. c. 1. *supra*, and otherwise as to the king and his council shall seem fit ; without any pardon by the king, without the assent of the party, and without making him satisfaction. And by c. 3. none

38 Edw. 3. st. 2.
c. 3. E. & 1.

None to be impeached for obeying these ordinances.

other subject keeping these ordinances, shall incur any forfeiture of life and member, nor of lands or goods, because of the said things ordained ; and if any person attempt against the said ordinances, he shall be brought to answer as aforesaid ; and if he be convict, he shall be put out of the king's protection, and punished after the form of the 27 Edw. 3. st. 1. c. 1. *supra*. And by c. 4.

38 Edw. 3. st. 2.
c. 4. E. & 1.

Punishment of such as sue maliciously upon this act.

if any person maliciously or falsely make pursuit against any of the realm, for cause comprised in these ordinances, and thereof be attainted, such plaintiff shall be punished at the ordinance of the king and his council, and shall make amends to the party grieved. And the king, the prelates, dukes, earls, barons, nobles and commons, clerks and lay, shall aid, comfort and counsel, the one the other, and impeach such offenders, and resist their enterprizes, without suffering them to inhabit, or pass by their jurisdictions, and shall defend the one the other from all damages, as far forth as if such prosecutions

cutions

cutions were made against them in common. By the 13 Ric. 2. st. 2. c. 3. E. & I. if any man bring or send within the realm, or the king's power, any summons, sentence, or excommunication, against any person, for the cause of making motion or execution of the statute of provisors, he shall be put in prison, and forfeit all his lands, tenements, and goods, and moreover incur the pain of life and member. And if any prelate make execution of such summons, &c. his temporalities shall be taken and remain in the king's hands till due redress be made: and if any person of less estate make such execution, he shall have imprisonment, and make fine and ransom by the discretion of the king's counsel. And the 16 Ric. 2. c. 5. E. & I. enacts, that if any purchase or pursue in the court of Rome, or elsewhere, any translations of bishops, processes, and sentences of excommunications, bulls, instruments, or other things which touch the king, against him, his crown, or his realm, and they which bring within the realm, or them receive, or make thereof notification, or any other execution within the realm, or without, their notaries, procurators, maintainers, abettors, fautors, and counsellors, shall be put out of the king's protection, and their lands and tenements, goods and chattels, forfeit to the king; and they shall be attached by their bodies, and brought before the king and his council to answer to the cases aforesaid, or process shall be made against them by *præmunire facias*, as it is ordained in other statutes of provisors.

13 Ric. 2. st. 2. c. 3. E. & I.

Penalty for impeding the execution of the statute of provisors.

16 Ric. 2. c. 5. E. & I.

Præmunire for purchasing bulls from Rome.

The 32 Hen. 6. c. 1. Ir. enacts, that all the statutes against provisors, as well in England as in Ireland, shall be kept in force. And if any provisor do sue any provision upon any man beneficed within Ireland, and by cause of the provision do enter into any benefice, and do take any goods from any beneficer of the church, against whom any such provisions are sued, the party grieved may recover treble damages, and he that taketh such goods, shall pay £20. half to the king, and half to him that will sue. And by the 7 Edw. 4. c. 2. Ir. whatsoever man of holy church purchase any dignity, parsonage, or vicarage, by bulls of the pope to hold in com-

All statutes against provisors in England to be in force in Ireland.

32 Hen. 6. c. 1. Ir.

Penalty for suing any provision.

7 Edw. 4. c. 2. Ir.

None shall purchase benefices in commendam from Rome.

commendam, shall be out of the protection of the king, and forfeit the value of said benefices during his natural life, and shall incur all the penalties in the statutes against provisors: And no pardon or license of the king shall be available, if it be not by act of parliament: And if any man of the church occupy any parsonage or vicarage by *commendam* by the bulls apostolic, if it be of his own collation, he shall make collation thereof within 6 months; and if he do not, then the dean and chapter of the diocese shall make collation of the benefice within 6 months then next ensuing: And if the dean and chapter make no collation of the benefice within 6 months, it shall be lawful to the king to present. And by the

1 Edw. 4. c. 3. Ir.

Letters patent of pardon to those that sue to Rome for certain benefices, void.

10 Hen. 7. c. 5. Ir.

Statutes of provisors confirmed.

Penalty for obeying the fulminations, &c. of the pope.

24 Hen. 8. c. 12. s. 3. Eng.

s. 4.

Penalty for procuring any process, &c. from the see of Rome, in causes of matrimony, &c.

7 Edw. 4. c. 3. Ir. all letters patent of pardon to be granted by the king to any provisor, that claims title by the bulls of the pope to any benefice, where at the time of impetrating of the said bulls the benefice is full of an incumbent, shall be void. And by the 10 Hen. 7. c. 5. Ir. all the statutes made against provisors, as well within England as Ireland, are confirmed, and shall be put in force within this land.

The 24 Hen. 8. c. 12. Eng. which transferred the jurisdiction of ecclesiastical matters and causes from the pope to the king, in the manner already mentioned (*ante* page 51--2.) enacts (s. 3.) that if any prelate, minister, or curate, by occasion of the fulminations from the see of Rome, refuse to minister the sacraments, and other divine services, they shall have one year's imprisonment, and make fine and ransom at the king's pleasure. And by s. 4. if any person in any of the causes mentioned in s. 1. (*ante* page 52.) attempt or procure any foreign process, inhibitions, appeals, sentences, suspensions, interdictions, excommunications or judgments, or execute any of the same, or do any act to the derogation of any process, sentence, judgment, or determination had in any courts of the king's dominions for such causes, every such person, and their fautors, comforters, abettors, procurers, executors and counsellors, shall incur the penalties of the statute of provision and *præmunire* 16 Ric. 2. c. 5. And this act, which by s. 5. 6. & 7. establishes the order of gradation of appeals to the several ecclesiastical

ecclesiastical courts within the realm (*vide* page 52.) by s. 8. prohibits any other appeal or foreign process out of the realm: And by s. 10. enacts, that if any person shall pursue any appeal contrary to this act, or refuse to observe the same concerning appeals and foreign processes for the causes aforesaid, such persons, their procurers, fautors, advocates, counsellors, and abettors, shall incur the penalties in the 16 Ric. 2. c. 5. *supra*. And the 25 Hen. 8. c. 19. Eng. (revived by the 1 Eliz. c. 1.) also enacts, (s. 3.) that no appeals shall be made out of the king's dominions to the bishop or see of Rome, in any causes beginning in any courts within the king's dominions; but all appeals, what cause soever they concern, shall be made as is limited for appeals in causes of matrimony, tithes, &c. by the 24 Hen. 8. c. 12. *supra*. And by s. 5. if any person sue or provoke any appeals to the see of Rome, or procure or execute any process from Rome to the derogation of this act, such person, his aiders, counsellors, or abettors, shall incur the penalties of the 16 Ric. 2. c. 5. *supra*. The 28 Geo. 3. c. 32. Ir. which establishes the jurisdiction of the court of delegates, for the trial of appeals from the courts of the archbishops of Ireland, as already stated (*ante* page 53.) enacts, (s. 2.) that if any person shall provoke or sue any appeal, to the derogation or let of the due execution of this act, or contrary to the same, such person, his aiders, counsellors and abettors, shall incur the penalties of *præmunire* contained in the 16 Ric. 2. c. 5. E. & I.

The 25 Hen. 8. c. 21. Eng. transfers to the archbishop of Canterbury the power theretofore exercised by the pope, of granting licenses, dispensations, &c. in the manner already stated (vol. 1. p. 317. 8.) but provides, (s. 20.) that the archbishop of Canterbury shall have no power by this act to visit any colleges, hospitals, or other places religious, which be exempt; but that redress, visitation, and confirmation, shall be had by the king by commission under the great seal; so that no visitation be had by the bishop of Rome, nor by his authority, nor by any out of the king's dominions, nor that any person resiant in the king's dominions, depart out of the king's dominions, to any visitation or assembly for religion.

s. 8.

Appeals to Rome prohibited.

s. 10.

Penalty for pursuing, &c appeals, process, &c. to or from Rome.

25 Hen. 8. c. 19. s. 3. Eng.

All appeals to Rome prohibited

s. 5.

Præmunire for suing of appeals to Rome, or executing process from thence.

28 Geo. 3. c. 32. s. 2. Ir.

*Præmunire to sue appeals to Rome contrary to this act.**The king may visit colleges, &c exempt.*

25 Hen. 8. c. 21. s. 20. Eng.

- s. 22. *Penalty for suing to Rome for any license, &c.* gion. And by s. 22. if any person within the king's dominions sue to the court of Rome for any license, faculty, dispensation, or other thing contrary to this act, or put in execution any license, &c. obtained from Rome, or from any claiming authority by the same, for any causes that may be granted by authority of this act, or attempt any thing contrary to this act, or maintain, admit, or obey any censures, or other process from Rome, to the derogation of this act; such persons, their aiders, counsellors, and abettors, shall incur the penalty in the act of provision and *præmunire*, 16 Ric. 2. c. 5. By
- s. 23. *Monasteries, &c. shall pay no pensions to the see of Rome.* s. 23. this act shall not be expounded to the derogation of any grants of any houses or places exempt, which before this act have been obtained at Rome, or by authority thereof; provided that the chief rulers and governors of such houses, &c. shall not pay any *pension, portion, or other cense to the see of Rome, nor admit any visitation, nor any confirmation from the see of Rome, or by authority thereof, or for any person to be elected, named, or presented to be heads of such houses exempt, nor shall make any oath to the bishop of Rome upon the pain limited in this act; but every such visitation and confirmation of such heads elect, shall be made within this realm, within such houses exempt, by such persons as shall be appointed by the king's commission. Provided (s. 24.) that in such houses exempt, where no such confirmation hath been used, they shall not be bound to take any confirmation within this realm, but use their privileges therein as before. By s. 27. the
- s. 24. *Certain monasteries, &c. require no confirmation.* king by advice of his council, shall have power for the ordering and reformation of all indulgences and privileges thereof within this realm, or king's dominions, heretofore obtained at the see of Rome, and of the abuses of such indulgences and privileges; and such order as shall be taken by his highness in that behalf shall be observed, upon the pains limited in this act.
- s. 27. *King and council may reform indulgences.* The 28 Hen. 8. c. 19. Ir. contains similar clauses. The
- 28 Hen. 8. c. 19. Ir.

* By s. 1. & 2. all pensions, censures, portions, Peter-pence, or other impositions, to the use of the see of Rome, are abolished.

The 1 & 2 Ph. and M. c. 8. Eng. (s. 34. to 40.) confirms all feoffments, fines, surrenders, forfeitures, assurances, conveyances, estates and interests in any wise conveyed, had or made to king Henry VIII. or king Edward VI. or to any person, &c. by deed, act of parliament, or otherwise, of the sites, lands, &c. of archbishopricks, bishopricks, late monasteries, priories, nunneries, commanderies, deanries, houses of friars, colleges, chantries, hospitals, prebends, or free chapels; and enacts, that whosoever shall, by any process obtained out of any ecclesiastical court within the realm, or without, or by pretence of any spiritual jurisdiction, or otherwise, contrary to the laws of this realm, molest any person, &c. for any of the said lands, &c. above specified, contrary to this act, shall incur the danger of the act of *præmunire*, 16 Ric. 2. c. 5. And so much of this act as concerns any matter or cause of *præmunire*, is confirmed by the 1 Eliz. c. 1. s. 32. Eng. The 3 & 4 Ph. & M. c. 8. Ir. and 2 Eliz. c. 1. Ir. contain similar clauses.

1 & 2 Ph. & M.
c. 8 s. 34. to 40.
Eng.

*A confirmation
of assurances to
Hen. 8. Edw. 6.
and other persons
of abbey lands,
&c.*

*A præmunire
to molest person
in respect there-
to.*

1 Eliz. c. 1.
s. 32. Eng.
3 & 4 Ph. & M.
c. 8. Ir.
2 Eliz. c. 1. Ir.

The king having been declared head of the church, by authority of the 26 Hen. 8. c. 1. Eng. (*vide* vol 1. p. 164.) and the title of “defender of the faith, and of the church of England, and also of Ireland, in earth the supreme head,” having been united and annexed for ever to the imperial crown of England by the 35 Hen. 8. c. 3. Eng. the 1 Eliz. c. 1. s. 16. Eng. accordingly further enacts, that no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall enjoy or exercise any power, jurisdiction, superiority, authority, pre-eminence, or privilege, spiritual or ecclesiastical, within this realm, or king’s dominions. And by s. 17. such jurisdiction, &c. as by any spiritual or ecclesiastical authority hath been heretofore, or may be lawfully exercised for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever be united and annexed to the imperial crown of this realm. And by s. 27. if any person shall by writing, printing, teaching, preaching, express words, deed or act, advisedly, maliciously, and directly affirm, maintain, or defend

*The king head
of the church.*
26 Hen. 8. c. 1.
Eng.
35 Hen. 8. c. 3.
Eng.

1 Eliz. c. 1.
s. 16. Eng.

*Foreign juris-
diction abolished*

s. 17.

*And annexed to
the crown.*

s. 27. 28. 29.
& 30.

*Penalty of the
maintenance of
foreign autho-
rity.*

1st offence.

2nd offence.

3rd offence.

s. 31.

Within what
time an offender
shall be im-
peached.

s. 37.

None shall be
indicted, &c.
but by 2 wit-
nesses.

s. 33.

Penalty for aid-
ing such of-
fenders.

2 Eliz. c. 1. Ir.

s. 6.

Ecclesiastical
jurisdiction by
whom exercised
in Ireland.

defend the authority, &c. of any foreign prince, &c. heretofore claimed or usurped within this realm; or shall advisedly, maliciously, and directly, put in ure or execute any thing for the extolling, advancement, setting-forth, maintenance or defence of any such pretended or usurped jurisdiction, &c. or any part thereof; he, his abettors, aiders, procurers, and counsellors, being thereof attainted according to the course of the common law, shall, for the first offence, forfeit all his goods and chattels, real or personal: And by s. 28. if such person shall not have goods worth £20. he shall also be imprisoned for a year: And by s. 29. the ecclesiastical promotions of every spiritual person so offending shall be void. And if any such offender, after conviction or attainder, do estsoons commit the said offence, he shall for such 2nd offence incur the penalties of the 16 Ric. 2. c. 5. And by s. 30. the 3rd offence shall be adjudged high treason. But by s. 31. no person shall be molested for any offence committed by preaching or words, unless he be indicted within one half year, and any person imprisoned for such offence, if not indicted within said time, shall be set at liberty. By s. 37. no person shall be indicted or arraigned for any of the offences in this act, unless there be 2 witnesses to testify the offence; and the said witnesses, or so many of them as shall be living, and within the realm at the time of the arraignment, shall be brought forth face to face, to declare what they can say, if the party require it. And by s. 38. if any person shall give relief, aid, or comfort, to a person offending in any such case of *præmunire* or treason, this shall not be taken to be an offence, unless there be 2 witnesses openly to testify, that the person had notice and knowledge of the offence committed.* The 2 Eliz. c. 1. Ir. contains clauses similar to those of the 1 Eliz. c. 1 Eng. *supra*; and also provides (s. 6.)† that the kings and queens of this realm shall have authority by letters patent under the great seal of England, or of this realm, (and the lord deputy or other governor of this realm, shall

* Vide 23 Eliz. c. 1. s. 3. Eng. *ante* p. 397.

† This clause is taken from the 1 Eliz. c. 1. s. 18. Eng. which was repealed by the 16 Car. 1. c. 11. Eng. *vide* vol. 1. p. 6.

shall likewise have power by letters patent made by his warrant under the great seal of this realm,) to assign, as often and for such time as they shall think fit, such persons being natural born subjects, as the king or lord deputy shall think meet, to exercise all manner of spiritual or ecclesiastical jurisdiction within this realm. By the 9 W. 3. c. 1. s. 3. Ir. no popish archbishop, bishop, vicar-general, dean, nor any other papist exercising any ecclesiastical jurisdiction, not established by the laws of this kingdom, jesuit or friar, shall come into this kingdom from parts beyond the seas, on pain of 12 months imprisonment, and then to be transported beyond seas out of the king's dominions, wherever the king, or chief governor, shall think fit; and if any such Romish ecclesiastical person, so transported, shall again return into this kingdom, he shall be guilty of high treason. And by s. 4. any person that shall knowingly harbour, relieve, conceal, or entertain any such popish archbishop, bishop, vicar-general, dean, jesuit, friar, or any other papist exercising ecclesiastical jurisdiction, not established by the laws of this kingdom, or any regular popish clergyman, that shall come into this kingdom contrary to this act, shall for the 1st offence, forfeit £20.; for the 2nd offence double that sum; and if he shall offend the 3rd time, to forfeit all his lands and tenements of freehold or inheritance, during his life, and also all his goods and chattels; one moiety to the king, the other to such person as shall inform, so as such moiety do not exceed £100. and the surplus to the king; the said forfeiture for the 3rd offence to be recovered by action of debt, &c. in any court of record at Dublin, or at the assizes in the respective counties. And by s. 5. upon information on oath to any justice of peace in his county, against any person that shall knowingly entertain, succour, relieve, or conceal any ecclesiastical popish person contrary to this act, the said justice shall issue a summons in writing under his hand, requiring the person so informed against, at a certain day and place within the county where such offence shall be committed, to appear before him and some other justice of peace

9 W. 3. c. 1.
s. 3. Ir.

Persons exercising ecclesiastical jurisdiction &c. to be transported.

Treason to return.

s. 4.

Penalty for harbouring or relieving them.

s. 5.

Duty of justices of peace in respect to persons charged with harbouring, &c.

- peace of said county, to answer the said charge; at which time and place the said justices shall, in presence of the person accused, or in case of his neglect to appear, being duly summoned, proceed to the examination of said matter; and if it shall appear to them on evidence upon oath, that the person so complained of is guilty, they shall by warrant, levy the said forfeitures of £20. for the 1st offence, and £40. for the 2nd offence, of the goods of the offender, and dispose of one moiety of such forfeitures to the informer, and the other to the treasurer of the county for the use of the county; and for default thereof commit the offender to the county gaol, until he shall pay said forfeitures. But by s. 7. if any person shall think himself aggrieved by the determination of such 2 justices of peace, he may appeal to the next judges of assize, or to the justices of peace at the next quarter-sessions. By s. 8. all justices of peace shall issue their warrants for apprehending and committal of all popish ecclesiastical persons that shall remain in this kingdom contrary to this act; and for suppressing all monasteries, friaries, nunneries, or other popish fraternities or societies. And by s. 9. all justices of peace shall give an account in writing of their proceedings in execution of this act, at the next quarter-sessions for the county in which they shall dwell, which shall be at such sessions entered and registered. And by s. 10. if any justice of peace, mayor, or other officer, shall neglect doing his duty in execution of this act, he shall forfeit £100. to be recovered by action of debt, &c. one moiety to the king, the other to the informer, and be disabled from serving as a justice of peace during his life.
- The 2 Ann. c. 3. 1r. further enacts, that every popish clergyman that shall come into this kingdom after the 1st of January, 1703, shall be liable to such penalties, &c. as are imposed by the 9 W. 3. c. 1. on papists exercising ecclesiastical jurisdiction. And by s. 2. any person who shall knowingly harbour, relieve, conceal, or entertain any such clergyman so coming into this kingdom, shall be liable to such penalties as by said act is imposed on the harbourers, &c. of popish archbishops, &c.
- s. 7.*
Appeal given.
- s. 8.*
Justices of peace to apprehend the principal offenders, and suppress friaries, &c.
- s. 9.*
And to give an account of their proceedings.
- s. 10.*
Penalty for default.
- 2 Ann. c. 3. s. 1. 1r.*
All popish clergymen coming into this kingdom liable to the penalties of the 9 W. 3. c. 1.
- s. 2.*
Persons harbouring or relieving them, how punished.

&c. and to be levied on them as by said act is directed: and all justices of peace, sheriffs, constables, and other subjects, are required to use their diligence in apprehending all such regular or other popish priests, who shall come into this kingdom contrary to this act. By

s. 3. if any mayor, justice of peace, or other officer, shall

s. 3.

neglect doing his duty in execution of this act, he shall forfeit £100. to be recovered by action of debt, &c. one

Penalty for default of officers.

moiety to the crown, the other to the informer; and be

disabled from serving as a justice of peace during his

life. And by s. 4. every person who shall come into

s. 4.

this kingdom contrary to the 9 W. 3. c. 1. or to this act,

may be indicted and tried in such county in this king-

Offenders against 9 W. 3. or this act, where tried.

dom wherein he shall be found and taken, or in any

county where the crown, by commission under the great

seal of this kingdom, shall appoint. By the 8 Ann. c. 3.

8 Ann. c. 3. s. 20. Ir.

s. 20. Ir. if any person shall discover any archbishop, bi-

shop, vicar-general, dean, jesuit, monk, friar, or other

Rewards for discovering such offenders.

regular popish clergyman, or any papist exercising any

ecclesiastical jurisdiction, or any secular popish clergy-

man who hath not been legally registered, or any po-

popish school-master, or any papist teaching or instructing

youth in private houses as tutor, usher, under-master,

or assistant to any protestant school-master, so as they

may be apprehended and convicted, he shall receive as

a reward, the sum of £50. for every archbishop, bishop,

vicar-general, or other person exercising any foreign

ecclesiastical jurisdiction in this kingdom; £20. for each

regular clergyman, and each secular clergyman not re-

gistered pursuant to the 4 Ann. c. 2. (*ante* p. 423—4.);

and £10. for each popish school-master, tutor, usher,

under-master, or assistant, to be levied on the

popish inhabitants of the county, or county of the city

or town, where such regular or secular popish clergy-

man did respectively exercise such foreign jurisdiction,

or officiate as a popish priest, and where such popish

school-master, &c. taught or instructed youth, or did

most commonly reside, and shall be convicted thereof;

to be levied in such manner, and on such persons, as

money for robberies by the 9 W. 3. c. 9. where the bur-

glary or robbery is presented by the grand jury to be

committed

s. 31.

*Such offenders
when transmit-
ted to the gaols
of sea port towns
&c. for trans-
portation.*

s. 32.

*Masters of ships
&c. compellable
to receive them
for transporta-
tion.*

*But entitled to
payment for
transporting
them.*

*Collectors to ob-
tain certain re-
ceipts for such
payments.*

committed by papists only; and to be levied in the county of Dublin, and county of the city of Dublin, in such manner, and on such popish persons, as other public money is levied, at the quarter-sessions of the peace in said county or county of the city. By s. 31. every popish archbishop, &c. exercising ecclesiastical jurisdiction, and every popish priest, popish school-master, and papist, who by offending against this or any former act, shall be liable to transportation, shall, within 3 months, be transmitted by order of the justices of peace in their quarter-sessions, to the common gaol of the next seaport town, to remain until transported. And by s. 32. it shall be lawful for all masters of ships, and others, to take such popish regular clergyman, popish priest, and popish school-master, and transport said persons beyond the seas: And if any merchant freighting any ship outward bound for any port or place not within Great Britain or Ireland, shall refuse to receive such popish regular clergyman, &c. (not exceeding 5 in one ship) when required by the chief magistrate or his deputy of such place or port, where such person shall remain in gaol, the collector and other officer of the customs is required not to discharge such ship, until such merchant, or such master of the ship, shall consent so to do, on pain of forfeiting £30. to the crown. And the said collector is further required to pay to the said merchant or master £5. for the transportation of every such person to any port of the West Indies, not being subject to the crown, and £3. for the transportation of every person to any place in Europe not being within the dominions of the crown; the same to be allowed the collector, on producing a receipt of the merchant or master acknowledging the receipt of said sum, and also a receipt acknowledging that he hath received the body of such popish person; in which receipt shall be expressed the name of such person so to be transported, and the place where he did last inhabit or reside, and the time the said person hath remained in gaol, and from what county gaol he hath been transmitted to said port or place; which receipts shall be testified by the chief magistrate,

magistrate, or his deputy of such port, &c. and which receipt last mentioned shall be inrolled in the crown office of the court of K. B. in Dublin. By s. 33. if any such popish regular clergyman, &c. shall be found in this kingdom out of the custody of the said merchant, &c. s. 33. Punishment of persons found out of the custody of the masters of ships, &c. he shall suffer the penalties inflicted on any popish regular clergyman, who hath been banished and returned again into this kingdom. And the said merchant, &c. shall at the time of receiving said sum from the collector, and receiving the body of such popish person, enter into a recognizance, before the chief magistrate of the place, in the penalty of £50. to transport the said person into some place not within this kingdom or Great Britain, or the dominions thereunto belonging; and the collector by whom the said sum shall be paid, shall deliver the said recognizance to the commissioners of the revenue, when he shall account for the payment of said sum; which shall by the commissioners be returned into the crown office at Dublin, for which no fee shall be paid. Masters of ships &c. to enter into a certain recognizance.

By the 5 Eliz. c. 1. s. 2. Eng. if any persons dwelling within the queen's dominions, shall by writing, ciphering, printing, preaching, teaching, or act, advisedly and willingly hold, maintain, or defend the power of the bishop of Rome heretofore used within this realm; such person, his abettors, procurers, and counsellors, and also his aiders and comforters, upon purpose to further the said usurped power, being thereof indicted or presented within one year after any such offences committed, and being convicted, shall incur the penalties provided by the 16 Ric. 2. c. 5. (*ante* p. 531.) And by s. 3. as well justices of assize, as any two justices of the peace, (whereof one to be of the *quorum*,) shall have power in their sessions to inquire of all offences contrary to the premises, in like manner as they may of other offences against the queen's peace, and shall certify every presentment afore them made concerning the same, before the queen in the king's bench, within 40 days after any such presentment made, if the term be then open; and if not, at the first day of full term next following the said 40 days; upon pain that every of the justices of assize, s. 3 & 4. Offences where and how inquirable.

assize, or justices of peace, making default of such certificate, to forfeit £100.* to the queen. And by s. 4. the justices of the king's bench, as well upon every such certificate, as by inquiry before themselves, shall have power to hear and determine every such offence, in such manner as if the persons against whom any presentment shall be had upon this statute, had been presented upon any offence in the 16 Ric. 2. c. 5. And by s. 10. & 11. if any such offender as in s. 2. *supra*, after such conviction as aforesaid, do eftsoons commit the said offence, he shall suffer as in cases of high treason. Provided (s. 12.) that any attainder to be had by force of this act, shall not make any corruption of blood, disheriting of any heir, forfeiture of dower, nor prejudice of the right of any person, other than the right of the offenders during their natural lives. And by s. 13. it shall be lawful to every person to whom the right of any lands after the death of any such offender should have appertained, if no such attainder had been, to enter into the same without *ouster le main*, as they might have done if this act had never been. By s. 18. the charitable giving of reasonable alms to any offender, shall not be taken to be any abetment, &c. And by s. 19. if any peer offend against this act, he shall be tried by his peers. By s. 23. no person shall be indicted for assisting, maintaining, comforting, or abetting of any person for the said offences in defending of the bishop of Rome, unless he be thereof lawfully accused by such testimony as, by the jury by whom he shall be indicted, shall be thought sufficient to prove him guilty. By s. 15. this act shall be read at every quarter-sessions by the clerk of the peace, and at every leet by the steward, and once every term in the hall of every house of court and chancery, by persons to be appointed by the lord chancellor. The 28 Hen. 8. c. 13. Ir. contains clauses similar to the 5 Eliz. c. 1. s. 2. 3. & 4. *supra*, but this statute seems to have been repealed by the 3 & 4 Ph. & M. c. 8. Ir. amongst other statutes against the supremacy of the see of Rome, and is not revived by the 2 Eliz. c. 1. Ir. And indeed it

s. 10. & 11.

Treason for the
2d time to main-
tain authority of
the see of Rome.

s. 12. & 13.

No corruption of
blood, nor loss
of dower.

s. 18.

Alms-giving no
abatement.

s. 19.

Peers tried by
their peers.

s. 23.

Upon what proof
persons convict-
ed of aiding, &c.

s. 15.

This act how
proclaimed.

28 Hen. 8. c. 13.
Ir.

* "£40." in the 28 Hen. 8. c. 13. Ir.

it is to be observed, that all laws made contrary to the supremacy of the see of Rome, since the 20th year of king Henry VIII. were repealed by the 1 & 2 Ph. & M. c. 8. Eng. but the 24 Hen. 8. c. 12. 25 Hen. 8. c. 19. and 25 Hen. 8. c. 21. *ante* p. 532—3. are expressly revived by the 1 Eliz. c. 1. s. 4. 6. & 8. Eng. And the 28 Hen. 8. c. 19. *ante* p. 534. Ir. which was repealed by the 3 & 4 Ph. & M. c. 8. Ir. was also revived by the 2 Eliz. c. 1. Ir.

By the 13 Eliz. c. 2. s. 7. Eng. (the other clauses of which are stated *ante* p. 480.) if any person shall bring into this realm any token or thing called an *agnus dei*, or any crosses, pictures, beads, or such like vain and superstitious things, from the bishop of Rome, or from any person claiming authority from the said bishop to consecrate the same, and shall deliver or offer the same to any subject of this realm, to be worn or used, as well the person so doing, as all other persons which shall receive the same, to the intent to use and wear the same, shall incur the penalties of the 16 Ric. 2. c. 5. And by s. 8. if any person to whom such *agnus dei* or other things shall be offered, shall apprehend the party offering the same, and bring him to the next justice of peace, if he shall be of power so to do, or for lack of such ability shall, within 3 days after such offer made, disclose the name of such person as shall make the offer, and the dwelling place or places of resort of the same person (which he shall endeavour to know by all the means he can) to the ordinary of the diocess, or to any justice of peace where such person to whom such offer shall be made, shall be resiant; and also if such person shall receive any such *agnus dei*, or other thing, and shall within one day after such receipt, deliver the same to any justice of peace, such person shall not incur any penalty. And by s. 10. if any justice of peace to whom any matter before mentioned shall be shewed, do not, within 14 days, declare the same to some of the privy council, such justice shall incur the pain provided by the 16 Ric. 2. c. 5. No provisions similar to these are contained in any Irish statute.

Bringing superstitious things into the realm, a præmunire.
13 Eliz. c. 22. s. 7. Eng.

s. 8.

Offence of receiving them how purged.

s. 10.

Penalty of a justice not disclosing an offence declared unto him.

And

*Præmunire to
send money, &c.
to foreign semi-
nary, &c.*

27 Eliz. c. 2.
s. 6. Eng.

And lastly the 27 Eliz. c. 2. s. 6. Eng. enacts that if any person under her majesty's obedience, shall wittingly and willingly convey out of her majesty's dominions, or give or contribute any money or other relief for any jesuit, seminary priest, or such other ecclesiastical person as in s. 4. (*ante* p. 417.) or for the maintenance or relief of any college of jesuits or seminary beyond the seas, or of any person in the same, such offender shall incur the penalty of *præmunire* in the 16 Ric. 2. c. 5.

Many other offences are made liable to the penalties of *præmunire*, as contained in the 16 Ric. 2. c. 5. E. & I. (*ante* p. 531.) which is particularly distinguished as the statute of provision and *præmunire*. But I shall confine myself to stating, or referring to, in this chapter, such statutes only as relate to the offence of *præmunire*, according to its original nature and meaning. The other statutes will be found under the respective heads to which they seem more properly to belong.

*Not lawful to
slay one at-
tainted in
præmunire.*

5 Eliz. c. 1.
s. 21. Eng.

By the 5 Eliz. c. 1. s. 21. Eng. it shall not be lawful to kill any person attainted upon any *præmunire*, by reason of any judgment given upon the same, or by pretence of any words contained in any statute of provision and *præmunire*.

CHAP. VI.

Of Misprisions and Contempts, affecting the King and Government.

§ 1.
*Concealment of
high treason on-
ly misprision of
treason.*

FIRST as to *misprision of treason*: It is declared and enacted by the 1 & 2 Ph. & M. c. 10. s. 8. Eng. that concealment or keeping secret of any high treason, shall be deemed only misprision of treason, and the offenders therein

therein forfeit and suffer as in cases of misprision of treason. The 3 & 4 Ph. & M. c. 11. Ir. (some clauses of which were of a temporary nature) contains also the same provision. The clauses of the 13 Eliz. c. 2. Eng.* which relate to the offence of concealing bulls from Rome, which is thereby made misprision of treason, have been already stated (*ante* p. 480.) And by the 14 Eliz. c. 3. Eng. if any person shall falsely forge or counterfeit any kind of coin, of gold or silver, as is not the proper coin of this realm, nor permitted to be current within this realm, every such offence shall be deemed misprision of high treason; and the offenders therein, their procurers, aiders, and abettors, shall be imprisoned, and forfeit such lands, goods, and chattels, as in cases of misprision of treason for concealment of high treason. The 28 Eliz. c. 6. Ir. is the corresponding statute in Ireland.

3 & 4 Ph. & M.
c. 11 s 7. Ir.

13 Eliz. c. 2.
s 5 & 6. Eng.

Concealing bulls
from Rome, mis-
prision of trea-
son.

14 Eliz. c. 3.
Eng.

Counterfeiting
foreign gold or
silver coin, not
current, mispri-
sion of treason.

28 Eliz. c. 6.
Ir.

II. Next as to *misprision of felony*: By the 3 Edw. 1. c. 9. E. & I. if any sheriff, coroner, or bailiff, within franchise or without, for reward or for prayer, or for fear, or for any manner of affinity, conceal, or consent, or procure to conceal, any felonies done in their bailiwicks, or otherwise will not attach nor arrest such felons there, as they may, or will not do their duty for favour to such misdoers, they shall have one year's imprisonment, and after make a grievous fine at the king's pleasure, if they have wherewithal; and if not they shall have imprisonment for 3 years. So much of this statute as respects the following of hue and cry against felons, will be found in another place. And by the 3 Hen. 7. c. 1. E. & I. the justices of peace of every shire, may take by their discretion an inquest, whereof every man shall have lands and tenements to the yearly value of 40s. at the least, to inquire of the concealments of other inquests taken before them, and afore other, of such matters and offences as are to be inquired of and presented afore justices of the peace, whereof complaint shall be made

§ 2.

Penalty for con-
cealing felonies.

3 Edw. 1. c. 9.
E. & I.

3 Hen. 7. c. 1.
s. 1. E. & I.

Inquests to in-
quire of the
concealments of
other inquests.

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* This statute is incorrectly referred to in all the editions of Sir W. Blackstone's commentaries, as a statute relating to the coin.

by bill, as well within franchise as without. And if any such concealment be found of any inquest had or made within the year after the same concealment, every person of the same inquest to be amerced for the concealment, by discretion of the same justices of the peace; the said amercements to be sessed in the same sessions.

§ 3.

Penalty for persuading a soldier to desert.

1 Geo. 1. st. 2. c. 47. s. 1. Eng.

III. To the head of *contempts* against the king's prerogative, may be referred the 1 Geo. 1. st. 2. c. 47. Eng. which enacts, that if any person, (other than an enlisted soldier) shall, in Great Britain or Ireland, or in the isles of Jersey or Guernsey, by words or other means, persuade or procure any soldier in the service of the king to desert or leave such service, or shall go about and endeavour as aforesaid, to persuade, &c. such soldier to desert, &c. such person shall forfeit to the king, or to any other person that will sue for the same, £40. to be recovered by bill, plaint, or information, in any court of record at Westminster, wherein, &c. and if such offender hath not goods and chattels, lands or tenements, to the value of £40. or that from the circumstances of the crime it shall be thought convenient, the court before which the conviction shall be, shall award the said offender to prison for any time not exceeding 6 months, and also to stand in the pillory for one hour, in some market-town next the place where the offence was committed, in open market there, or in the market-town itself, where said offence was committed. And by s. 2. no action shall be brought, or prosecution carried on, by virtue of this act, unless the same be commenced within 6 months after the offence committed. And it is a provision of this act, that any person having professed the popish religion, who shall not at the time of his enlisting, declare to the officer or soldier who enlisteth him, that he hath been, or is of the popish religion, shall receive such corporal punishment not extending to life, as a court martial shall inflict for the same. And by the 3 Geo. 1. c. 2. s. 50. Eng. for such offences as shall be committed against the 1 Geo. 1. c. 47. *supra*, in England, the penalties shall be recoverable in any of the courts at Westminster, and

s. 2.

Limitation for actions, &c. against persons executing this act.

s. 3.

Penalty for papist enlisting without declaring his religion.

3 Geo. 1. c. 2. s. 50. Eng.

*Penalties in the 1 Geo. 1. *supra*, where recoverable.*

and if in Scotland in the court of exchequer there, and if in Ireland in any of the Four Courts at Dublin.

IV. With respect to contempts and misprisions against §. 4.
the *king's person and government*. The 13 Car. 2. st. 1. *A præmunire to affirm that any person is bound to endeavour a change of government:*
c. 1. s. 3. Eng. enacts, that if any person shall, maliciously and advisedly, by writing, printing, preaching, or other speaking, express, publish, utter, declare, or affirm, that there lies any obligation upon him, or any other person, from any oath, covenant, or engagement, to endeavour a change of government either in church or state, or that both houses of parliament, or either house of parliament, have or hath a legislative power without the king, or other words to the same effect, such person shall incur the penalty of a *præmunire* in the 13 Car. 2. st. 1. c. 1. s. 3. Eng.
16 Ric. 2. c. 5. Provided (s. 4.) that no person be prosecuted for any of the offences aforesaid, unless it be by order of the king under his sign manual, or by order of the council table of the king, directed unto the attorney general, or some other of the king's counsel; nor shall any person incur any of the penalties before mentioned, unless he be prosecuted within 6 months after the offence committed, and indicted thereupon within 3 months after such prosecution. And by s. 5. no person shall be indicted, &c. for any of the offences aforesaid, unless he be accused by the testimony of 2 witnesses upon oath, which witnesses shall be brought before him face to face, and openly avow the same, or unless the party arraigned shall willingly confess the same. And provided (s. 6.) that this act shall not extend to deprive either house of parliament, or any of their members, of their just, ancient freedom and privilege of debating any matters of business propounded in either of said houses, or at any conference or committee of either of said houses of parliament, or touching the repeal or alteration of any old, or preparing any new laws, or the redressing any public grievance. And by s. 7. no peer shall be tried for any offence against this act, but by his peers: but every peer who shall be convicted of any offence against this act, shall be disabled during his life to sit in parliament, unless his majesty shall pardon him: and if his majesty shall

s. 4.

Such prosecutions how, and when to be.

s. 5.

2 Witnesses necessary to convict.

s. 6.

Proviso for freedom of speech, &c. in parliament.

s. 7.

Proviso as to peers.

shall grant his pardon to any peer or commoner convicted of any offence against this act, such peer or commoner shall be restored as if he had never been convicted. No statute similar to this has been made in Ireland.

§ 5.

Denying the right of the king and parliament to limit the crown, a præmunire.

6 Ann. c. 7.
s. 2. Eng.

s. 3.

Limitation for prosecutions.

V. Next as to contempts against the *king's title*, not amounting to treason. By the 6 Ann. c. 7. s. 2. Eng. if any person shall maliciously and directly, by preaching, teaching, or advised speaking, declare, maintain, and affirm, that any other person hath any right or title to the crown of this realm, otherwise than according to the 1 W. & M. st. 2. c. 2. Eng. 11 & 12 W. 3. c. 2. Eng. and the acts made in England and Scotland for the union of the two kingdoms; or that the kings and queens of this realm, with and by the authority of parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the crown, such person shall incur the penalty of *præmunire* in the 16 Ric. 2. c. 5. Provided (s. 3.) that no person shall be prosecuted by virtue of this act, for any words spoken, unless the information of such words be given upon oath, to one justice or more of the peace within 3 days after such words spoken, and the prosecution be within 3 months after such information; and no person shall be convicted by virtue of this act for any words spoken, but by the oaths of 2 witnesses.

§ 6.

What persons shall take the oath of supremacy.

1 Eliz. c. 1.
s. 19. Eng.

VI. Of a similar description is the offence of *neglecting or refusing to take the oaths* appointed by several statutes for securing the government. Various provisions of these statutes have been already stated (vol. 1. chap. 10.) but the following remain to be mentioned. By the 1 Eliz. c. 1. s. 19. Eng. every archbishop, bishop, and other ecclesiastical person, and other ecclesiastical officer and minister, and every temporal judge, justice, mayor, and other lay or temporal officer and minister, and other person having the queen's fee or wages, within this realm or dominions, shall take a corporal oath († of supremacy,) before such person as shall please the queen,

† The oath of supremacy appointed by this act has been superseded by the 1 W. & M. st. 1. c. 8. Eng. : and the oath of supremacy appointed for Ireland, by the 2 Eliz. c. 1. Ir. has been superseded by the 3 W. & M. c. 2. Eng. which appoints other oaths, and is confirmed by the 21 & 22 Geo. 3. c. 48. Ir.

queen, under the great seal of England,* to assign to take the same. And by s. 20. if any such archbishop, &c. shall obstinately refuse to take the said oath, he shall forfeit during his life every ecclesiastical and spi-

s. 20 & 21.

Penalty for refusal.

ritual promotion, benefice, and office, and every temporal and lay promotion and office, which he hath solely at the time of such refusal; and the title in every such promotion, as against every such person refusing, shall be void. And by s. 21. every person refusing shall be disabled to retain or exercise any office or other promotion which he, at the time of such refusal, hath jointly or in common with any other person. By s. 22. every per-

s. 22.

son that shall be preferred to any bishoprick or other spiritual promotion, or that shall be by the crown promoted to any temporal or lay office, ministry, or service within the realm, before he take upon him to receive or exercise the same, shall take the oath (of supremacy) before such persons as have authority to admit to such office, ministry, or service, or before such as by the crown, by commission under the great seal, shall be appointed.

When and before whom the oath shall be taken.

And by s. 23. if any person promoted to any such spiritual benefice, &c. or that shall be preferred to any lay office, &c. do peremptorily and obstinately refuse to take the oath so to him to be offered, he shall be judged disabled to have the same promotion or office. By s. 24.

s. 23.

Penalty for refusal.

every temporal person doing homage to the queen, or that shall be received into service with the queen, shall take the said oath before the lord chancellor, or such person as by the crown shall be appointed. And by s. 25. every person taking orders, and which shall be promoted to any degree of learning in any university,

s. 24.

Persons doing homage, &c.

before he shall take such orders or degree, shall take the said oath before his ordinary, commissary, chancellor, or vice-chancellor. Provided (s. 26.) that if any person having any estate of inheritance in any temporal office, shall obstinately and peremptorily refuse to take the said oath, and after shall willingly require to take

s. 25.

Persons taking orders or degrees in any university

the

s. 26.

Proviso as to persons having estates of inheritance in offices.

* "Or of this realm, or the lord deputy, &c. for the time being, by his warrant under the great seal of this realm," here added in the 2 Eliz. c. 1. lr.

2 Eliz. c. 1. Ir.

5 Eliz. c. 1.
s. 5. Eng.*Persons requir-
ed to take the
oath of supre-
macy.*

s. 6.

*The bishop may
tender the oath
to any spiritual
person.*

s. 7.

*Lord chancellor
may issue com-
mission for
taking it.*

s. 8.

*Penalty for 1st
refusal of taking
it.*

s. 9.

the said oath, and do take the same, he shall be vested in like estate and possession of the said office, as he was before the refusal. The 2 Eliz. c. 1. Ir. contains similar clauses. The 5 Eliz. c. 1. s. 5. Eng. further enacts, that as well all persons appointed by the 1 Eliz. c. 1. *supra*, to take the oath expressed in the same, as all other persons which shall take ecclesiastical orders, or shall be promoted to any degree of learning in any university, and all school-masters and teachers of children, as also all persons that shall take any degree of learning in the common law, as well utter barristers as benchers, readers, ancients in any house of court, and all principal treasurers, and such as be of the grand company in every inn of chancery, and all attornies, prothonotaries, and philizers, and all sheriffs, escheators, and feodaries, and all other persons which shall take upon them any office in the common law, or any other law, and all other officers of any court, shall take the oath of supremacy, before they be admitted to take upon them any such office, degree, &c. and that in the court whereunto they shall belong; and if they do not belong to any court, they shall take the oath before a convenient assembly, and before such persons as shall have authority to admit such persons to such office, &c. or else before such persons as by the queen, by commission under the great seal, shall be assigned according to the oath set forth in the 1 Eliz. c. 1. By s. 6. every archbishop and bishop shall have power to minister the oath to every ecclesiastical person, as well in places exempt as elsewhere. By s. 7. the lord chancellor may direct commissions to any persons, giving them authority to minister the oath to such persons as by the commissions they shall be authorized to tender the oath unto. By s. 8. if any persons compellable to take the said oath, or to whom the oath by any such commission shall be appointed to be tendered, shall refuse to take the said oath, the party so refusing, and being lawfully indicted or presented within one year, and convicted, shall suffer the penalties of the 16 Ric. 2. c. 5. By s. 9. all persons having authority to tender the oath, shall, within 40 days after such refusal,

refusal, if the term be open, and if not, then at the first day of the full term next following the said 40 days, make certificate of the names, places, and degrees of the persons refusing the same, before the queen in the king's bench, upon pain to forfeit £100. to the queen; and the sheriff of the county where the king's bench shall be holden, shall impanel a jury to inquire of such refusals, which jury may, upon every such certificate, and other evidence, proceed to indict the persons so offending, as they may do of any offence against the queen's peace committed within the county. By s. 20. no person shall be compelled by this act to take the oath, upon the second time of offering, except he be an ecclesiastical person that have cure or office in the church, or such person as shall have office in any ecclesiastical court, under any archbishop or bishop, or such person as shall wilfully refuse to observe the orders for divine service in the church of England, after they be publicly by the ordinary, or some of his officers, admonished to observe the same: or such as shall openly and advisedly deprave by words, writings, or open fact, any of the rites and ceremonies used in the church of England; or that shall say or hear private mass prohibited by law.

Certificate of refusal into the king's bench.

s. 20

Who only shall be compelled to take the oath upon the 2nd tender.

And with respect to the oath of allegiance: By the 7 Jac. 1. c. 6. s. 2. to 25. Eng. every person above the age of 18 years, in this act mentioned, shall take the oath (of allegiance or obedience) set-forth in the 3 Jac. 1. c. 4. (which is altered by the 1 W. & M. st. 1. c. 8. *post.*) viz. every archbishop and bishop before the lord chancellor: every ecclesiastical judge, officer and minister, before the archbishop or bishop: Every person of or above the degree of a baron or baroness of England, and all of the privy council residing in London or Westminster, or within 30 miles thereof, before any 4 of the privy council, whereof the lord chancellor, lord treasurer, lord privy seal, or principal secretary to be one, and if such persons live in the country distant above 30 miles from London, then before the bishop of the diocese, or such other persons as the lord chancellor shall by *dedimus* authorize: The sworn servants of the king,

What persons are required to take the oath of allegiance, and before whom.

7 Jac. 1. c. 6. s. 2. Eng.

s. 3.

s. 4.

s. 5.

the

- the queen, or of the household of the prince, and of the rest of the king's children, before the lord steward, the lord chamberlains and vice-chamberlains to the king and the queen, the treasurer and controller of the household, the master of the horse, the dean of the chapel, and the knight marshal, the officers of the green cloth, or any
- s. 6. 3 of them: Every temporal judge, justice of peace, sheriff, escheator, feodary, and other officer of justice, and every other person that shall receive any fee of the king, before the lord chancellor, lord treasurer, lord admiral, lord warden of the 5 ports, or one of them, or before one of the chief justices of K. B. or C. B. or before the justices of assize of the county where the parties reside, or such persons as the lord chancellor shall authorize:
- s. 7. All mayors, bailiffs, or other chief officers of cities and towns corporate, before such persons as usually administer the oath to them at their entrance into their offices:
- s. 8. The knights, citizens, burgesses, and barons of the 5 ports, of the commons house of parliament, before they be permitted to enter into the house, before the lord steward or his deputy; and the master of the ordnance, lieutenant of the tower of London, and mint-master there, the 4 principal officers of the navy under the lord admiral, before the lord chancellor and the lord admiral, or any of them: The officers, servants, and others, within the tower of London, before the lieutenant of the tower:
- s. 9. All vice-admirals, captains, masters, officers, ministers, and soldiers, in the king's ships, before the principal officers of the navy, or any 2 of them: All persons having charge of fortresses or garrisons, and all captains who shall have charge of soldiers within this realm, before the justices of assize of the county, or before 2 justices of the county, &c. where such castles, &c. shall stand:
- s. 10. All doctors, advocates, and proctors of the civil law, and their clerks, before the bishop of the diocese where they shall reside:
- s. 11. All serjeants at law, servants to the judges, and all others in the serjeants inns, before the chief justices of the K. B. and C. B. and chief baron of the Exc. or some one of them: All subjects in the inns of court, and the principals and treasurers
- s. 12.
- s. 14.
- s. 15.

surers of every inn of chancery, before the readers and benchers of the several houses, or 4 of them, in their open halls: All others, not being principal or treasurer, that shall be admitted into any inn of chancery, before the principal or treasurer, and ancients, or 4 of them, in their halls: All prothonotaries, philizers, officers, attornies and clerks, in any court of record, before the judges of such courts: All clerks of the chancery, and their under-clerks, and all other officers of the chancery, and their clerks, before the master of the rolls, or before 2 masters of chancery: All parsons, and other persons ecclesiastical taking orders, and every school-master and usher, before the bishop of the diocess, or other ordinary in open court: The vice-chancellors of the universities, presidents, wardens, provosts, masters of colleges and halls, and other heads of houses, proctors, and bea- dles, publicly in the convocation before the senior mas- ters: Every person that shall be promoted to any degree in school, before the vice chancellor, in the congrega- tion house: All fellows of houses, and scholars of halls or colleges, being under the degree of a baron, before the head or chief governor of the college, &c. and in the open hall: All doctors of physic, and all others who practice physic, that shall be admitted into the college of physicians in London, before the president of the college: And all aldermen, sheriffs, or under officers, of cities and towns corporate, and such as shall be made freemen thereof, before the mayor, bailiff, or other chief officer. By s. 26. it shall be lawful for any of the privy council, and every bishop in his diocess, to require any baron or baroness of the age of 18 years, or above, to take the oath: and if any person of or above said age and degree shall be presented or convicted for not coming to church, or not receiving the holy communion or sacra- ment, before the ordinary or other having power to take such presentment or indictment, 3 of the privy council, whereof the lord chancellor, lord treasurer, lord privy seal, or principal secretary to be one, shall require such person to take the oath; and if any other person of the said age, and under the said degree, shall be presented

s. 16.

s. 17.

s. 18.

s. 19.

s. 20.

s. 21.

s. 22.

s. 23.

s. 24.

s. 26.

*Who may tender
the said oath and
to whom.*

OR

or convicted for not coming to church, or receiving the sacrament, or if the minister, constable and churchwardens, or any 2 of them, shall complain to any justice of peace near to the place where any person complained of shall dwell, and the said justice shall find cause of suspicion, any justice shall require such person to take the oath; and if any person of the age of 18 years shall refuse to take the oath duly tendered, the persons authorized may commit the offender to the common gaol until the next assizes or quarter-sessions, where the oath shall be again required; and if the person shall refuse to take the oath, such person shall incur the penalty of *præmunire* in the 16 Ric. 2. c. 5. except women covert, who shall be committed only to prison till they take the oath. By s. 27. every person refusing to take the oath as above, shall be disabled to execute any public place of judicature, or bear any other office, (being no office of inheritance, or ministerial function) within England, or to practise the law, or physic, or surgery, or the art of an apothecary, or any liberal science for gain, until he shall receive the oath.

Penalty for refusing the oath.

s. 27.

Further penalty.

Penalty for executing any office after refusal to take the oaths, and receive the sacrament.

25 Car. 2. c. 2. s. 5. Eng.

(9 Geo. 2. c. 26. Eng. & 16 Geo. 2. c. 30. Eng.)

The 25 Car. 2. c. 2. Eng. (amended by the 9 Geo. 2. c. 26. Eng. and 16 Geo. 2. c. 30. Eng.) and which requires the oaths of allegiance and supremacy to be taken, and the sacrament to be received, and the declaration against transubstantiation made and subscribed, as a qualification for offices civil or military, or for places of trust or profit under the crown, has been already in part stated (vol. 1. p. 292 to 294). And this statute further provides (s. 5. & 9.) that every person that shall neglect or refuse to take the oaths, or the sacrament, or make and subscribe said declaration (as appointed by this act, and by the 9 Geo. 2. and 30 Geo. 2. which amend it) and after such neglect, &c. shall execute any of the said offices or employments, and being thereupon convicted upon information, presentment, or indictment, in any of the king's courts at Westminster, or at the assizes, such person shall be disabled to sue any action, &c. or information in law, or to prosecute any suit in equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy

legacy or deed of gift, or to bear any office within England, Wales, or Berwick, and shall forfeit £500. to be recovered by any person that shall sue by action of debt, &c. in any of his majesty's courts at Westminster. By s. 6. (as amended by the 1 Ann. st. 1. c. 22. s. 5. & 6. Eng.) the names of all such persons that take the oaths shall be inrolled, with the time of their taking the same, in rolls kept only for that purpose; which rolls for the court of chancery shall be publicly hung up in the office of the petty bag, and the roll for the king's bench in the crown office, and for the common pleas in the office of the chief prothonotary of said court, and for the exchequer in the office of the chief remembrancer, and in some public place in every quarter-sessions, and there remain during the whole term and the whole sessions. And none of the persons aforesaid shall pay to any officer belonging to the courts above *12d.* for his entry of taking the oaths. By s. 7. upon the tender of any person to take the oaths, the courts shall administer the same. By s. 8. if any persons not bred up by their parents from their infancy in the popish religion, and professing themselves popish recusants, shall educate their children, or suffer them to be instructed or educated in the popish religion; such person being thereof convicted shall be disabled of bearing any office or place of trust or profit in church or state; and such children shall be disabled of bearing any such office or place of trust or profit, until they be reconciled to the church of England, and take the oaths before the justices of peace in the quarter-sessions of the county or place where they shall inhabit, and thereupon receive the sacrament, and obtain a certificate thereof under the hands of 2 of said justices of peace. By s. 11. this act shall not prejudice the peerage of any peer, or take away any privilege or profit which any peer ought to enjoy by reason of his peerage, or take away any creation money, or bills of impost, nor make void any pension or salary granted by his majesty to any person for valuable consideration for life or years, other than such as relate to any office or place of trust under his majesty, and other than voluntary

s. 6.

Names of persons taking the oaths where to be registered.

(1 Ann. st. 1. c. 22. s. 5. & 6. Eng.)

s. 7.

The courts to administer the oaths.

s. 8.

Popish recusants &c. excluded from offices of trust or profit, until they take the oaths, &c.

s. 11.

Proviso as to peerages, pensions, &c.

luntary pensions; nor make void any estate of inheritance, granted by his majesty or his predecessors in any lands or hereditaments, not being offices; nor take away any pension granted by his majesty to any person who was instrumental in the preservation of his majesty after the battle of Worcester, until his arrival beyond the seas; nor make void the grant of any office of inheritance, or any fee thereto belonging, enjoyed by any person who shall neglect to take the oaths, &c. so as such person appoint his deputy, until such time as the person having such office shall, in the court of chancery, before the lord chancellor, or in the king's bench, take the oaths, and receive the sacrament according to law, and subscribe the declaration; and so as the deputy take the oaths, receive the sacrament, and subscribe the declaration; and so as such deputies be approved of by the king, under his privy signet. By s. 12. peers may take the oaths, and make the subscription, and deliver the certificates before the peers sitting in parliament, if the parliament be sitting within the time limited, and in the intervals of parliament in chancery, in which courts the said proceedings are to be recorded.

s. 12.

Where peers
may take the
oaths, &c.

Members of
parliament not
taking the oaths,
&c. and recusants
convict, forbidden
the king's or queen's
presence.

30 Car. 2. st. 2.
s. 5. Eng.

• Vide 31 Geo. 3.
c. 32. s. 1. Eng.
post.

The 30 Car. 2. st. 2. Eng. which is another act "for preserving the king's person and government by disabling papists from sitting in either house of parliament" and which requires the oaths of allegiance and supremacy, and the declaration against popery, to be taken, made, and subscribed, as a qualification for sitting in parliament, has been also in part stated (vol. 1. p. 140 to 143.) And this statute further enacts, (s. 5.) that every [*peer of the realm,] and member of the house of peers, and every peer of Scotland, or of Ireland, being of the age of 21 years or upwards, not having taken the said oaths, and made and subscribed the said declaration; and every member of the house of commons not having taken the said oaths, &c. and every person convicted of popish recusancy; who shall come advisedly into, or remain in the presence of the king or queen, or shall come into the court or house where they reside, shall

shall incur the penalties in this act; unless such peer, member, or person so convicted, do in the next term, take the oaths, and make and subscribe the declaration, in chancery, between the hours of 9 and 12 in the forenoon. Provided (s. 12.) that this act shall not prejudice any person for coming into or remaining in the presence of the king or queen, who shall first have license so to do, by any warrant under the hands and seals of 6 or more privy counsellors, by order of the privy council, upon some urgent occasion therein to be expressed, so as such license exceed not the space of 10 days, and that said license be first filed and put upon record in the office of the petty bag in chancery, for any body to view without fee, and no person be licensed for above 30 days in one year.

s. 12.

Proviso as to license from 6 privy counsellors.

By the 1 W. & M. st. 1. c. 8. s. 2. Eng. the oath of supremacy required by the 1 Eliz. c. 1. *ante*, and the oath of allegiance required by the 3 Jac. 1. c. 4. and 7 Jac. 1. c. 7. *ante*, are abrogated as already stated (vol. 1. p. 289. 290.) But by s. 3. & 4. the oaths and declaration appointed by this act, shall be taken before such persons as by any act were authorized to tender the oath of allegiance hereby abrogated. And by s. 5. all persons that were obliged by any statute to take the abrogated oaths, or either of them, shall take the oaths hereby appointed, in such manner, at such times, before such persons, and in such courts and places, as they ought to have taken the said abrogated oaths, or either of them, in case the same had not been abrogated. And every person who shall neglect or refuse to take the same, shall incur the same penalties as by any statute was appointed for neglect, &c. to take the former oaths. By s. 9. if any person shall refuse to take the oaths when tendered, the person tendering shall commit the person refusing to the common gaol, or house of correction, for 3 months, unless such offender shall pay to the person tendering such oaths, such sum not exceeding 40s. as he shall require such offender to pay for his refusal; which money shall be paid to the church-wardens or overseers for the relief of the poor of the parish where such offender

The old oaths of allegiance and supremacy abrogated.

1 W. & M. st. 1. c. 8. s. 2. Eng. s. 3. & 4.

New oaths, &c. before whom taken.

s. 5.

Like penalties for not taking the new oaths, as were in respect of the old.

s. 9.

Penalty for refusal to take these oaths, &c. when tendered.

offender did last inhabit: and if at the end of 3 months, the person so refusing shall again refuse to take either oath when lawfully tendered, the person tendering shall commit the person refusing to the common gaol, or house of correction, for 6 months; unless such offender pay down to the persons tendering, such sum, not exceeding £10. nor under £5. as they shall require for his second refusal, to be disposed of as aforesaid; and unless such offender become bound with 2 sureties, with condition to be of good behaviour, and to appear at the next assizes or gaol delivery; at which the oath shall be again openly tendered by the justices of assize, &c.; and if the offender then refuse to take the oaths, he shall be incapable of any office, civil or military, and shall be bound to the good behaviour, until he take the oaths; and in case such person shall refuse also to make the declaration in the 30 Car. 2. st. 2. he shall suffer all penalties as a popish recusant convict, and be deemed a popish recusant convict. By s. 10. every commission officer, and non-commission or warrant officer, employed in their majesties service by sea or land, shall, before the delivery of such commission or warrant, take the oaths, and make the declaration, before the commissioners of the admiralty, or their deputies, or such person as shall issue such commission or warrant, or such others as shall be authorized to administer the same; and every such officer that shall refuse to take the oaths, &c. shall be incapable of such office. By the 1 W. & M. st. 1. c. 25. s. 2. Eng. if any commission for a military employment shall be granted to any person at a distance from London, exceeding 20 miles, such person may take the oaths, &c. at the next muster after the receipt of the commission, before the commissary of the musters or his deputy, who are required to send up a certificate thereof, under hand and seal, to the person who issued such commission. And by s. 3. if such person refuse, his commission shall be void. But by s. 4. nothing in this act shall extend to the militia.

s. 10.

*Before whom
land and sea of-
ficers shall take
the oaths, &c.*

1 W. & M. st. 1.
c. 25. s. 2. Eng.

*Commission offi-
cers 20 miles
from London,
how to take the
oaths.*

s. 3. & 4.

*Papists to be re-
moved from
London and
Westminster.
1 W. & M. st. 1.
M.*

The 1 W. & M. st. 1. c. 9. Eng. provides, that the lord mayor of London, and every justice of peace of London and Westminster, and Southwark, and of Middlesex,

Middlesex, Surrey, Kent, and [*Sussex,] shall cause to be arrested and brought before him every person (not being a merchant foreigner) within the said cities or 10 miles of the same, reputed to be papists, and tender him the declaration in the 30 Car. 2. st. 2. ; and in case such person refuse to make the declaration, and shall after such refusal continue within the said cities, or 10 miles distance from the same, he shall suffer as a popish recusant convict. And by s. 3. every justice of peace shall certify every subscription before him taken, and the names of every person refusing, into the king's bench, the next term, or at the next quarter-sessions ; and if the person so refusing and certified shall not, within the next term or sessions, appear in the king's bench or sessions, where such certificate shall be returned, and make the declaration, and indorse his so doing upon the certificate, he shall be adjudged a popish recusant convict. But by s. 5. nothing in this act shall relate to any foreigner, that shall be menial servant to any ambassador or public agent. And by the 1 W. & M. st. 1. c. 15. Eng. it shall be lawful for any 2 justices of peace, to tender to any person known or suspected to be a papist, the declaration in the 30 Car. 2. st. 2. and if such person shall not make and subscribe the said declaration, or shall forbear to appear before the justices, upon notice to him given or left at his place of abode, by any person authorized by warrant of the 2 justices, such person shall be subject to the penalties in this act. And by s. 3. the justices shall certify the name, surname, and place of abode of every person who shall refuse to make, &c. the declaration, or to appear before them, as also of every person who shall make, &c. the declaration, at the next quarter-sessions to be recorded. By s. 4. no papist or reputed papist refusing or making default as aforesaid, shall have any arms, gunpowder, or ammunition, other than such necessary weapons as shall be allowed him by order of the quarter-sessions, for the defence of his house or person. And any 2 justices by warrant, may authorize any persons in the day time, with the constable, tithingman, or head borough, to search for arms, or ammunition,

*extended to
Essex by 1 W.
& M. st. 1. c. 17.
Eng.

s. 3.

Names of persons refusing to make the declaration against popery to be certified.

s. 5.

Proviso as to servants of ambassadors, &c.

1 W. & M. st. 1. c. 15. s. 1. Eng.

2 Justices may tender declaration against popery.

s. 3.

Names, &c. of subscribers and refusers to be certified.

s. 4.

Refuser shall keep no arms.

- munition, which shall be in the custody of any such papist or reputed papist, and seize the same for the use of the crown; which justices shall at the next quarter-sessions deliver such arms, &c. in open court. By s. 5. every papist, &c. who shall not, within 10 days after such refusal or default as aforesaid, deliver to some of the justices of peace all arms or ammunition which he shall have, or shall hinder any person authorized by 2 justices to search for and seize the same, shall be committed to gaol, by warrant of 2 justices, for 3 months; and shall also forfeit the arms, and treble the value of them to the crown, to be appraised by the justices at the next quarter-sessions. And by s. 6. every person who shall be privy to the concealing the arms or ammunition of any person so refusing or making default, or shall hinder any person authorized in searching for and seizing the same, shall be committed to gaol by 2 justices for 3 months, and forfeit treble the value of the arms to the crown. By s. 7. if any person shall discover any concealed arms, &c. belonging to any refusing or making default as aforesaid, so as the same may be seized, the justices upon delivery of the same at the quarter-sessions, shall by order of sessions allow him a sum of money amounting to the value of the arms, &c. to be assessed by the sessions, and levied by distress and sale of the goods of the person offending. By s. 8. if any person, who shall have refused or made default as aforesaid, shall desire to submit, and present himself before the justices at the quarter-sessions, and shall in open court make and subscribe the declaration, and take the oaths (of allegiance and supremacy) in the 1 W. & M. st. 1. c. 1. he shall be discharged of all disabilities and forfeitures. By s. 9. no papist, &c. refusing or making default as aforesaid, shall have any horse above the value of £5. and any 2 justices of peace, by warrant may authorize any person, with the assistance of the constable, tithingman, or headborough, to search for and seize, for the use of the crown, all such horses so forfeited. By s. 10. if any person shall be assisting in the concealing any such horse belonging to any papist, &c.
- Penalty for not discovering, or hindering search for, arms.*
- Penalty upon concealers of arms,*
- Reward for discovery of arms.*
- Penalties discharged by subscribing declaration.*
- Papists horses, above £5 value, forfeited.*

&c. refusing or making default as aforesaid, he shall be committed to prison as aforesaid for 3 months, and shall forfeit to the crown treble the value of such horses, to be settled as aforesaid. By the 7 & 8 W. 3. c. 27. s. 1. *Penalty upon concealer of papists horses.* Eng. every person who shall refuse to take the oaths when tendered by persons lawfully authorized, or shall neglect to appear when summoned in order to have the oaths tendered, shall, until he take the oaths, be liable to the penalties inflicted upon popish recusants convict; and the persons tendering the oaths shall, upon every such refusal or default of appearance, record and enter in parchment the names and places of abode of the persons refusing or not appearing, with the time of such refusal or default, and certify the record to the justices of assize, *oyer and terminer* or gaol delivery, at the next session, who shall certify the same into the exchequer, that said court may issue process against the lands and goods of such person as against a popish recusant. And by s. 12. quakers who shall make and subscribe the declaration of fidelity in the 1 W. & M. st. 1. c. 18. (which is altered by the 8 Geo. 1. c. 6. *post p. 563.*) and shall produce such witnesses and certificates as by the said act are required, shall be exempted from the penalties provided by this act for such as refuse to take the oaths. *Proviso as to quakers.* And by s. 15. the penalties to be incurred by any persons, as popish recusants convict, by this act, for not taking the oaths, may be pardoned by the king under the privy seal. And the 1 Geo. 1. st. 2. c. 13. Eng. (which has been in part stated vol. 1. p. 289. to 292. and which supersedes the 13 W. 3. c. 6. Eng. 6 Ann. c. 14. s. 7. Eng. and 6 Ann. c. 23. s. 14. Eng.) also enacts (s. 10.) that it shall be lawful for 2 justices of peace, or any other person appointed by his majesty, by order in council, or by commission under the great seal, to tender the oaths (of allegiance, supremacy, and abjuration,) to any person whom they shall suspect to be disaffected, and if any person refuse to take them, such justices, &c. shall certify the refusal to the next quarter sessions of the county, &c. where such refusal shall be, to be recorded there, and shall from thence be certified by the clerk of

*Penalty upon
concealer of pa-
pists horses.*

*7 & 8 W. 3. c. 27.
s. 1. Eng.*

*Persons refusing
to take the oaths
in 1 W. & M.
st. 1. c. 8. lia-
ble to the penal-
ties of popish
regulars.*

s. 12.

*Proviso as to
quakers.*

s. 15.

*King may par-
don penalties,
under his privy
seal.*

*1 Geo. 1. st. 2.
c. 13. s. 10. Eng.*

*2 Justices, &c.
may tender the
oaths to sus-
pended persons.*

*Penalty for re-
fusing them.*

the peace into the chancery or king's bench, court of sessions, court or of justiciary in Scotland, there to be recorded; and every person neglecting to take the said oaths, shall be adjudged a popish recusant convict. And by s. 11. it shall be lawful for any 2 justices of peace, or other person by his majesty for that purpose specially appointed, &c. by writing under their hands and seals, to summon any person to take the oaths;* which summons shall be served on such person, or left at his usual place of abode with one of the family there; and if such person shall not appear according to such summons, then upon proof by oath of the serving of said summons (which oath such justices, &c. are empowered to administer) such justices, &c. shall certify the same to the next quarter sessions for such county, &c. to be entered on the rolls; and if such person shall not appear there and take the oaths, his name shall be publicly read at the first meeting of the sessions, and he shall be esteemed a popish recusant convict, and the same shall be certified by the clerk of the peace into the chancery, &c. And by s. 22. all persons, who by law are obliged to receive the sacrament, and subscribe the declaration against transubstantiation, shall continue obliged to receive the said sacrament, and subscribe the said declaration, together with the oaths appointed by this act, in such manner, and under such penalties in case of such neglect, as is required by any former law. Provided (s. 26.) that any persons who by this act shall become popish recusants convict, and shall thereafter take and subscribe the oaths, &c. in such manner as is appointed by this act, shall be discharged from such conviction. By s. 8. every person who shall neglect to take the oaths prescribed by this act, (*vide* vol. 1. p. 289. 291.) and after such neglect shall by himself or his deputy or trustee, execute any the said offices, &c. being convicted upon information or indictment, in any of the king's courts at Westminster, or at the assizes, upon prosecution before the court of justiciary, or circuits in Scotland, shall be disabled to sue any action, &c. at law, or to prosecute any

s. 11.

Punishment of persons refusing to appear before the justices.

s. 22.

Persons shall continue obliged to receive the sacrament.

s. 26.

Persons discharged of penalties by taking the oaths.

s. 8.

Penalty of acting as officers, &c. not having taken the oaths.

* *Vide* 51 Geo. 3. c. 32. s. 13. Eng. pass. p. 564.

any suit in equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to be in any office within Great Britain, or to vote at any election for members of parliament, and shall forfeit £500. to him that shall sue by action of debt, &c. in any of his majesty's courts at Westminster, and by way of summary complaint before the court of sessions, or prosecution before the court of justiciary in Scotland. The clauses s. 4. 5. & 19. relate peculiarly to Scotland: And sections 12. & 13. to the colleges of Oxford and Cambridge: And by s. 32.

s. 32.

nothing in this act shall extend to the office of lord great chamberlain of England, so as he substitute a deputy who shall take the oaths. No affirmation of the effect

*Office of lord
great chamber-
lain excepted.*

of the oath of abjuration was framed for quakers by this act (1 Geo. 1. st. 2. c. 13). But the 3 Geo. 1. c. 6. Eng. provides, that instead of the form prescribed by the 1 Geo. 1. st. 2. c. 6. Eng. (which was substituted for that appointed by the 7 & 8 W. 3. c. 34. Eng.) every quaker shall take the effect thereof in the following words: "I

*3 Geo. 1. c. 6.
s. 1. Eng.*

*Declaration for
quakers of the
effect of the ab-
juration oath.*

" *A. B.* do solemnly, sincerely, and truly, acknowledge,
" profess, testify, and declare, that king George is lawful
" and rightful king of this realm, and of all other his do-
" minions and countries thereunto belonging; and I do
" solemnly and sincerely declare, that I do believe the
" person pretended to be the prince of Wales, during
" the life of the late king James, and since his decease
" pretending to be and taking upon himself the stile
" and title of king of England by the name of James
" the third, or of Scotland by the name of James
" the eighth, or the stile and title of king of Great Bri-
" tain, hath not any right or title whatsoever to the
" crown of this realm, nor any other the dominions
" thereunto belonging; and I do renounce and refuse
" any allegiance or obedience to him. And I do so-
" lemnly promise, that I will be true and faithful, and
" bear true allegiance to king George, and to him will
" be faithful against all traitorous conspiracies and at-
" tempts whatsoever, which shall be made against his
" person, crown, or dignity: And I will do my best en-
" deavour to disclose and make known to king George,

“ and his successors, all treasons and traitorous conspi-
 “ racies, which I shall know to be made against him to
 “ any of them. And I will be true and faithful to the
 “ succession of the crown against him the said James,
 “ and all other persons whatsoever, as the same is and
 “ stands settled by an act intituled, “An act declaring the
 “ rights and liberties of the subject, and settling the
 “ succession of the crown, to the late queen Anne, and
 “ the heirs of her body, being protestants;” and as the
 “ same by one other act intituled, “An act for the fur-
 “ ther limitation of the crown, and better securing the
 “ rights and liberties of the subject, is and stands set-
 “ tled and entailed, after the decease of the said late
 “ queen, and for default of issue of the said late queen,
 “ to the late princess Sophia, electress and duchess dow-
 “ ager of Hanover, and the heirs of her body being pro-
 “ testants. And all these things I do plainly and sin-
 “ cerely acknowledge, promise, and declare, according
 “ to these express words by me spoken, and according
 “ to the plain and common sense and understanding of
 “ the same words, without any equivocation, mental
 “ evasion, or secret reservation whatsoever. And I do
 “ make this recognition, acknowledgement, renuncia-
 “ tion, and promise, heartily, willingly, and truly.” It
 is to be observed that the 6 Geo. 3. c. 53. Eng. which
 (upon the death of the pretender) has altered the oath of
 abjuration in the manner already stated (vol. 1. p. 289.)
 has not altered the affirmation of quakers of the effect
 of the abjuration oath, as above prescribed. But per-
 haps the 22 Geo. 2. c. 46, s. 36. Eng. (*ante* p. 261.) may
 be considered as supplying this apparent omission. The

31 Geo. 3. c. 32.
 s. 18. Eng.

No person to be
 summoned to
 take the oath of
 supremacy, or
 make the decla-
 ration against
 transubstantia-
 tion.

s. 19.

Catholics how
 relieved from the
 penalties of the
 1 W. & M. st. 1.
 c. 9. *ante*.

31 Geo. 3. c. 32. s. 18. Eng. recites the 1 Eliz. c. 1.
 3 Jac. 1. c. 4. 1 W. & M. st. 1. c. 8. and 1 Geo. 1. st. 2.
 c. 13. *ante*, as also the 25 Car. 2. c. 2. *ante*, and enacts,
 that no person shall be summoned to take the oath (of
 supremacy) and make the declaration (against transub-
 stantiation) or be prosecuted for not obeying such sum-
 mons. And by s. 19, the 1 W. & M. st. 1. c. 9. Eng.
 (*ante* p. 558-9.) shall not extend to any person professing
 the Roman catholic religion, who shall take and sub-
 scribe

scribe the oath of allegiance, abjuration, and declaration in this act appointed to be taken and subscribed, (*vide* vol. 1. p. 298.) And this statute (s. 20.) recites the 30 Car. 2. st. 2. s. 5. *ante* p. 556. and enacts, that no peer of Great Britain or Ireland, or member of the house of peers of Great Britain or Ireland, professing the Roman catholic religion, who shall take the oath of allegiance, abjuration, and declaration, in this act appointed to be taken and subscribed, shall be liable to be prosecuted for such offence (of coming advisedly into, or remaining in the presence of the king or queen, or coming into the court or house where they or any of them reside,) or be liable to any penalty for breach of the provision in said clause contained.

s. 20.

*Roman catholic
peers now ex-
empted from the
penalties of the
30 Car. 2. st. 2.
s. 5. ante.*

The 3 W. & M. c. 2. Eng. which required the oaths of allegiance and supremacy to be taken as a qualification for certain offices and professions in Ireland; and the 1 Ann. st. 2. c. 17. Eng. which further required the oath of abjuration, according to the form contained in the 1 Ann. st. 1. c. 22. Eng. to be also taken in Ireland; have been already referred to (vol. 1. p. 295. 6.) And the former of these statutes provides, (s. 14.) that it shall be lawful for 2 justices of peace (one to be of the *quorum*) within any county, &c. in Ireland, and they are required, to direct their warrant to any constable or other officer, to summon any person of the age of 18 years or upwards, to appear before such justices to take the oath of allegiance: And if such person shall not appear at the time and place, having no lawful impediment, or shall refuse to take the said oath, the said justices shall commit such person to the common gaol or house of correction for 3 months, unless such offender shall pay down to the justices, or any of them, such sum not exceeding 40s. as the said justices shall require; which money shall be paid to the church-wardens or overseers of the poor of the parish or place where such offender did last inhabit; and after 3 months from such default or refusal, 2 justices shall direct their warrant as aforesaid to summon such offender to take the said oath; and if such offender shall make default, &c. or refuse to take the oath, said justices

*In Ireland 2
justices of peace
may summon
any person aged
18 years, to
take the oath of
allegiance.
3 W. & M. c. 2.
s. 14. Eng.*

*Penalty for re-
fusal to appear
and take the
oath.*

justices shall commit such offender to the common gaol or house of correction for 6 months, unless such offender shall pay down to the justices such sum not exceeding £10. nor under £5. as said justices shall require, to be disposed of as aforesaid; and unless such offender shall become bound, with 2 sureties, to appear at the next assizes or general gaol delivery, to be holden for the county where such offender shall inhabit or reside, and in the mean time to be of good behaviour; at which assizes, &c. said oath shall be tendered by the justices of assize, &c. in their open assizes; and if such offender shall refuse to take the said oath, he shall incur the penalty of *præmunire* in the 16 Ric. 2. c. 5. E. & I. except women covert, who, upon refusal, shall be by the said justices of assize, in their open assizes, committed to gaol till they take the said oath. But by s. 15. quakers who shall take the declaration contained in this act, (of the effect of the oaths of allegiance and supremacy,) shall be exempted from the penalties of this act. Provided (s. 16.) that quakers shall not be capable to hold any office, &c. And by the 1 Ann. st. 2. c. 17. Eng. as already stated vol. 1. p. 296.) all persons holding offices, &c. that neglect or refuse to take the oath of abjuration are hereby made liable to the penalties of the 13 W. 3. c. 6. Eng.* These statutes were recognized in Ireland by the 21 & 22 Geo. 3. c. 48. s. 3. Ir. (*vide* vol. 1. p. 143.) And the 2 Ann. c. 6. Ir. which by s. 17. requires the oaths of allegiance, supremacy, and abjuration, and the declaration against popery, to be taken and subscribed, and the sacrament to be received, as a qualification for offices, &c. (as already stated vol. 1. p. 294.) by s. 18. enacts, that every person who shall refuse or neglect to take the said oaths, &c. and to deliver a certificate of his receiving of the sacrament, or to subscribe the said declaration as required by s. 17. shall be *ipso facto* adjudged incapable to have or enjoy said offices, or any profit appertaining

s. 15. & 16.

*Provisoes as to quakers.*1 Ann. st. 2.
c. 17. Eng.*Penalty of persons holding offices, &c. not taking the oath of abjuration.*2 Ann. c. 6.
s. 17 & 18. Ir.*Penalty for officers, &c. neglecting to take the oaths of supremacy, &c.*

* The penalties by the 13 W. 3. c. 6 s. 5. & 6. Eng. were the same as those contained in the 1 Geo. 1. st. 2. c. 13. s. 7. & 8. Eng. (*vide* vol. 1. p. 292 and *ante* p. 562.) except that by the latter, the incapacity to vote at elections for members of parliament is superadded.

pertaining to them; and such offices, &c. shall be void; and every person that shall, after such neglect or refusal, execute any of the said offices, &c. after the times expired for taking the said oaths, &c. and being thereupon convicted upon information, presentment, or indictment, in any of her majesty's courts in Dublin, or at the assizes, shall be disabled to sue any action, &c. at law, or to prosecute any suit in equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office within the realm, and shall forfeit £500. to him that shall sue by action of debt, &c. in any of said courts in Dublin. But the 6 Geo. 1. c. 9. Ir. provides, (s. 2.) that no person who shall be admitted into any office, &c. as in the 2 Ann. c. 6. *supra* is mentioned, shall be prosecuted upon said act, or any incapacity or penalty be incurred by reason of the same, unless such prosecution be commenced within 2 years after such person shall be admitted into such office, &c. and such prosecution carried on without delay. And by s. 3. the officer of every court where such oaths shall be taken, shall give to every person taking said oaths, and subscribing said declaration, if thereunto required, a certificate thereof; which certificate, upon proof being made by one witness that said certificate was signed by such officer, and was compared with the roll, shall be of the same force, as if the original rolls were produced; for which certificate the officer shall receive 6*d.* and no more. The 8 Ann. c. 3. s. 23. Ir. also enacts, that it shall be lawful for any 2 justices of peace within any county, county of a city, or county of a town, by warrant directed to any sheriff, constable, or other officer, to summon any man of the age of 16 years, to appear before such justices, and take and subscribe the oath of abjuration; and if said person so summoned shall not appear, (not having some lawful impediment) or, appearing, shall refuse to take and subscribe the said oath, being tendered by said justices, it shall be lawful for such justices to commit him to the common gaol or house of correction, for 3 months, or until he shall take said oath, unless he shall pay down to the

6 Geo. 1. c. 9.
s. 2. Ir.

*Prosecutions
against officers
for acting with-
out taking the
oaths, when to
be.*

s. 3.

*Certificate to
be given to per-
sons qualifying
for offices.*

8 Ann. c. 3.
s. 23. Ir.

*2 Justices may
summon any
man aged 16
appear and take
the oath of
abjuration.*

*Penalty for re-
fusing to appear,
or to take the
oath.*

the justice, a sum not exceeding 40s. as the said justices shall require, (which money shall be paid to the church-wardens or overseers of the poor of such place where such offender shall inhabit or reside) and shall be incapable of obtaining or having any license to have arms; and from 3 months after such default or refusal, it shall be lawful for 2 justices to direct their warrant to summon such offender to appear before them to take and subscribe said oath; and if he shall not appear, or shall appear, and upon tender of said oath refuse to take and subscribe the same, it shall be lawful for said justices to commit the offender to gaol for 6 months, unless he shall pay down a sum not exceeding £10. nor under £5. as the said justices shall require, for the relief of the poor as aforesaid, and be bound with 2 sureties to appear at the next assizes or general gaol delivery for the county wherein such offender shall inhabit or reside, (or at the quarter sessions of the peace in the county of Dublin, and county of the city of Dublin, if he shall be an inhabitant of said county or city,) and in the mean time to be of good behaviour; at which assizes, &c. the said oath shall be tendered to the offender by the justices of assize in their open assizes, or by the justices of peace at their quarter sessions in the county and county of the city of Dublin; and if the offender shall refuse to take and subscribe the oath, he shall incur the penalties of *præmunire* in the 16 Ric. 2. c. 5. But with respect to quakers this statute provides (s. 24.) that any quaker producing a certificate under the hands and seals of 6 or more credible men of their society, owning him to be one of them, and 2 of the subscribers appearing with the person for whom they certify, before any justice or magistrate who shall require the same, and he making and subscribing the declaration herein contained (against popery, and of the effect of the old oath of abjuration), shall be exempted from the penalties of this act.

s. 24

Proviso as to quakers.

19 & 20 Geo. 3. c. 6. Ir.

Protestant dissenters.

33 Geo. 3. c. 21. Ir.

The 19 & 20 Geo. 3. c. 6. Ir. which relieves protestant dissenters from the penalties of the 2 Ann. c. 6. has been already stated (vol. 1. p. 297.) And the exceptions made in favor of Roman catholics by the 33 Geo. 3. c. 21, s. 9. Ir.

s. 9. Ir. have been also stated (vol. 1. p. 300.) but this *Roman catholics.* statute provides (s. 3.) that nothing herein shall repeal or alter any law by which certain qualifications are required to be performed by persons enjoying any offices or places of trust under the king, other than as herein-after is enacted.

Incidental to the offence of not taking the oaths to the government, is the disability to carry arms; and the *Two justices, &c. may search for, and seize the arms of papists.* 7 W. 3. c. 5. Ir. intituled "An act for better securing the government, by disarming papists," accordingly enacts, *7 W. 3. c. 5. Ir.* (in analogy to the 3 Jac. 1. c. 5. and 1 W. & M. st. 1. c. 15. *ante* p. 413. 559.) that it shall be lawful for any 2 justices of peace within their jurisdiction, and all mayors, sheriffs, and chief officers of cities and towns corporate in their liberties, by themselves or by their warrants, to search for and seize all such arms, armour, and ammunition, as shall be concealed in any house, lodging, or other place, where they shall suspect such arms, &c. to be concealed; and such arms, &c. shall by the person so seizing them, be preserved for the use of the king; and the said person shall return a true account thereof *Returns thereof to be made.* to the lord deputy, to the end that the same may be brought into his majesty's stores. Provided (s. 2.) that *s. 2.* no search shall be made save between the rising and setting of the sun, other than in cities and their suburbs, *Search to be only made between sun-rising and setting.* towns corporate, market towns, and houses of such cities and towns; and in case such justices of peace, &c. after such search made, shall find cause to suspect that any arms, &c. remain concealed, they shall cause such person to be brought before him, and to be examined upon oath.* Provided s. 7. that the chief governor and privy council of this realm, may, by order of privy council, license any person to keep such arms as shall be expressed in such license; which license shall be granted without any fee other than 20s. for the writing thereof. *Proviso as to the license of chief governor and privy council.* [† By s. 8. no person using the mystery or art of making *s. 8.* any

* The clauses s. 3. & 6. of this act are superseded by the 13 Geo. 2. c. 6. s. 2. & 5. *post.* p. 571. 2.

* By the 19 & 20 Geo. 3. c. 19. s. 3. Ir. manufacturers may take as many apprentices as they please, whether master or apprentice be protestant or papist.

Popish apprentices not to be taken by makers of fire arms, &c.

s. 9.

Indentures of apprenticeship, &c. void.

Penalty for such apprentices exercising trade.

s. 12.

Persons refusing the oaths and declaration deemed papists.

s. 13.

Magistrates neglecting or refusing to execute this act, forfeit £50. and disabled to act.

any locks or barrels for guns, musquets, pistols, or other fire-arms, or of making swords, bayonets, skeines, knives, or other weapons, shall take to prentice, or use or instruct as an apprentice, any person of the popish religion, on pain of forfeiting £20. to be recovered by bill, &c. in any court of record; one moiety to the king and the other to the informer. And by s. 9. the indenture of apprenticeship, and all bonds and contracts to be made or entered into by reason of any person being put to be an apprentice, shall be void; and every person of the popish religion, who shall be put to be an apprentice, and who shall exercise the said art, &c. shall forfeit £20. to be sued for and recovered to the uses before mentioned; and the justices of peace, &c. shall send for all apprentices of such persons exercising said art, and tender to them the oaths of allegiance and supremacy, and the declaration against popery; and the refusal of such person to take said oaths, or subscribe said declaration, shall be a conviction of such persons, as also of the master of such apprentice, unless the master shall prove that such apprentice, at the time of his entering his service, was known or reputed to be of the protestant religion.* And by s. 12. every person shall be deemed to be a papist within the meaning of this act, who shall refuse to take the oaths of allegiance and supremacy, and subscribe the declaration against popery herein mentioned, when the same shall be tendered by any justice of peace; and if any such person shall take the said oaths, and subscribe the said declaration, said justice shall certify under his hand the taking said oaths, and return the said declaration to the quarter-sessions to be recorded. And by s. 13. if any justice of peace, &c. shall neglect or refuse to execute any the powers of this act, he shall forfeit £50. to be recovered in any court of record by bill, plaint, or information, wherein, &c. one moiety to the king, and the other to him that will sue for the same; and such offender shall be disabled to act

* So much of this statute, and of the 8 Ann. c. 3. Ir. as restrained papists from having horses of £5. value, is repealed by the 21 & 22 Geo. 3. c. 24. s. 12. Ir.

as justice of peace, or chief magistrate, in any county, city, or town corporate. The 10 W. 3. c. 8. s. 4. Ir. ^{10 W. 3. c. 8. s. 4. Ir.} further provides, that no papist, or reputed papist, shall be employed as fowler for any protestant, or under colour thereof have or use any gun or fire-arms; and if the same shall be found in the possession of any papist not qualified to keep the same, such gun, &c. shall be seized by warrant of any justice of peace of the county where the same shall be found, and shall, after such seizure, belong to the person giving information touching the same, notwithstanding that such gun, &c. did really belong unto some protestant, or other person qualified to keep arms. But the 19 Geo. 2. c. 14. Ir. ^{19 Geo. 2. c. 14. Ir.} explains this act by enacting that notwithstanding said act, protestant subjects may keep and use arms necessary for the defence of his majesty, the established government of this kingdom, their persons and properties. By the 13 Geo. 2. c. 6. Ir. ^{13 Geo. 2. c. 6. s. 1. Ir.} all justices of peace, mayors, bailiffs, magistrates, and chief officers of cities and towns corporate, within their respective counties, &c. shall use and exercise all the powers in the 7 W. 3. c. 5. *supra*; and all papists, or persons by this or any other law declared to be papists, shall, within 14 days after they shall knowingly get or have any arms, armour, or ammunition, discover and deliver up to some justice of peace, &c. of the county, &c. where any such papist, &c. shall dwell, all his arms, &c. that shall be in his hands, or in the custody of any person in trust for him; except such arms as the chief governor and privy council shall by license authorize any papist to have. And by s. 2. every papist, &c. who shall have any arms, &c. not being licensed, or who shall not deliver up the same as aforesaid, and every person who wittingly, willingly, or knowingly, shall have any arms, &c. to the use of or in trust for any papist, &c.; and every person who upon demand or search made for arms, &c. according to the direction of this and the said former act, shall conceal, refuse, or neglect to discover and give up to the persons authorized by said former act, to search for, &c. the same, all such arms, &c. as he or any person in trust for him shall have, or shall oppose, or in any wise disturb any person so empowered

No papist shall be employed as fowler for any protestant.

The 10 W. 3. c. 8. supra explained.

Papists within what time to discover and deliver up their arms.

s. 2.

Penalties by this act for not discovering or delivering up arms, or refusing or hindering search, or not appearing to be examined.

empowered to search for and seize the same; and every person who shall refuse to be examined upon oath, when required by any 2 justices of peace, or by the mayor, or chief officer, of any county, city, or town corporate, concerning the discovery and delivery of such arms, &c. and every person, who being summoned in writing, signed by 2 justices of peace, or by the mayor, &c. of any county, &c. where the person so summoned shall dwell, (whereof notice in writing shall be given to him, or left at his usual place of abode,) shall, without reasonable cause, refuse or neglect to appear before such justices, &c.; such person shall forfeit, *viz.* if a peer (being convicted at the assizes, or at the quarter-sessions for the county of Dublin, or county of the city of Dublin, where said offences shall be committed) for the 1st offence, £300; and if under the degree of a peer, for the 1st offence, (being convicted as aforesaid) £50. and shall suffer imprisonment for one year, and until he shall have paid said fines; and every person who shall offend a 2d time, being convicted as aforesaid, shall suffer the penalties of a *præmunire*; and said sums of £300 and £50. shall go, one moiety to the king, and the other to the persons prosecuting such offender to conviction, according to the direction of the justices. Provided (s. 3.) that nothing herein shall subject any papist, &c. to any penalty for concealing arms, &c. who shall voluntarily, before any information given, discover and deliver up all his arms, &c. to some justice of peace or chief magistrate. Provided s. 5. that no person shall be convicted upon this act, upon any confession or discovery he shall make being examined upon oath; nor shall any such examination be given in evidence against the person so examined, unless he be indicted for wilful perjury in such examination. And by s. 6. as often as any person shall be prosecuted for any the offences aforesaid, the justices, before whom such prosecution shall be, shall tender to every such person the oath of abjuration, and the oaths and declaration in the 7 W. 3. c. 5. *supra* contained; and if such person do refuse to take the said oaths, &c. such refusal shall amount to proof, that such person is a papist, and was

s. 3.

Proviso.

s. 5.

*No person shall
be convicted up-
on his confes-
sion.*

s. 6.

*Those to be
deemed papists
who refuse to
take the oaths.*

was so at the time of the offence committed. Provided (s. 7.) that though the person to whom such tender shall be made, shall take said oaths, &c. yet the person who shall prosecute may give evidence that such person was a papist, &c. By s. 8. if any quaker shall be charged with any of the offences aforesaid, upon proof that such person is and hath been a quaker, by producing and proving a certificate under the hands and seals of 6 or more credible men of his congregation owning him for one of them, and 2 of the subscribers appearing before any justices before whom such quaker shall be tried, such justices shall not tender the oaths, &c. but shall tender to such quaker the declaration provided for quakers by the 8 Ann. c. 3. By s. 9. the sheriffs of every county, shall return in calendar to the justices at every assizes, commission of *oyer and terminer*, and at every quarter sessions in the county of Dublin, and county of the city of Dublin, all persons who have been convicted in pursuance of this act, who have not paid the fine imposed, on pain of forfeiting £10. to be recovered by civil bill, to the use of the informer. And by s. 10. as often as any person so convicted shall not pay the fine pursuant to this act, within one calendar month after his year's imprisonment shall be expired, whereby the person discovering and convicting such offender may lose the reward, then the person so discovering, &c. shall receive the sum of £10. for every offender so convicted, to be given or distributed according to the direction of the justices before whom such offender shall be convicted; which sum the grand jury, who shall present such offender to be insolvent as aforesaid, shall present to be levied on the popish inhabitants of the county, county of the city, or county of the town wherein such offender shall be convicted; and the same shall be raised and paid in such manner as money is usually levied upon the county for reimbursing persons robbed of money or goods by tories, robbers, or rapparees. By s. 11. the justices of peace for said counties, &c. shall, once in every year, at the midsummer quarter-sessions, issue their warrants, signed by the justices who hold said sessions, and under the seal of the chairman of such sessions,

s. 7.

But other evidence may be given.

s. 8.

Proviso as to quakers.

s. 9.

Returns to be made by sheriffs of defaulters in not paying fines.

s. 10.

Convict not paying fine in a month after the year's imprisonment, discoverers how to receive their reward.

s. 11.

Justices at midsummer sessions to issue search warrants.

sions, therein requiring all high and petty constables within their respective baronies, parishes, and divisions, and any 2 other persons in each barony, whom they shall think fit to appoint, to search, according to the direction in the former act, for arms, &c. in the possession or power of all papists, &c.; and the chief magistrate of every city and town corporate, not being a county of a city, or county of a town, or his deputy, shall once in every year issue his warrant to the constables of such city, &c. to search as aforesaid; and the chief magistrate, or his deputy, neglecting to issue such warrant, shall forfeit £10.; and every high constable neglecting to execute such warrant shall forfeit £5.; and every petty constable so neglecting, &c. shall forfeit 20s. which penalties shall be sued for by civil bill where such chief magistrates, &c. reside, by any person who shall sue for the same, and be recovered with costs of suit. And

s. 12.

Penalty for default of justices in not making search.

by s. 12. if any justice shall, (after due information upon oath shall have been made before him of any arms, &c. being concealed by, or in the custody of any papist, &c.) refuse or neglect to search for such arms, &c. within a reasonable time after such information, such justice shall forfeit £20. to be recovered by civil bill as aforesaid.

s. 13.

Not to abridge the power of 2 justices, or chief officers of cities to search for such arms.

Provided (s. 13.) that nothing herein shall abridge the power of any 2 justices of peace within the limits of their jurisdiction, or of the mayors, sheriffs, and chief officers of cities and towns corporate, to search for and seize (according to the directions of this act, and of the 7 W. 3. c. 5.) all arms, &c. which shall be in the possession of any papist, &c. or of any person in trust for him, or that shall be concealed in any suspected place.

s. 14.

No papist shall have warlike stores, &c.

By s. 14. no papist, &c. shall for sale or otherwise keep or have any warlike stores, sword-blades, barrels, locks, or stocks of guns or fire-arms; and every papist, &c. so offending, being convicted by indictment before the jus-

Penalty.

tices of assize of the county where the offence shall be committed, or before the commissioners of *oyer and terminer*, (or by indictment before the justices of peace at the quarter-sessions for the county of Dublin, or county of

of the city of Dublin, if the offence be there committed) shall forfeit £20.; and shall suffer imprisonment for one year, and until he have paid the forfeiture; and the sum so forfeited may be sued for by civil bill, &c. By s. 15.

s. 15.

where any protestant servant, with the privity of his master being a papist, &c. shall carry or keep any arms in his custody, such master shall be deemed as if he ac-

Protestant servants of popish masters liable to penalties.

tually kept such arms, and shall suffer the penalties by this act inflicted on papists, &c.; and such servant shall be subject to the penalties of this act, as if he was a papist.

By s. 16. all suits and prosecutions for any offence against this act, shall be commenced within one year after the offence committed. By s. 17. every per-

s. 16.

Prosecutions to be in a year.

s. 17.

son professing the protestant religion, who shall educate, or suffer to be educated, any of his children, under the age of 14 years, in the popish religion, shall be deemed

Protestants educating children papists, deemed papists.

a papist to all purposes of this act. By s. 20. every justice of assize, and *oyer and terminer*, shall give this act, and the 7 W. 3. c. 5. in charge, as often as they shall

s. 20.

Judges of assize to give the 7W. 3. c. 5. and this act in charge to grand juries.

charge any grand jury.* The 33 Geo. 3. c. 21. Ir. which repeals all the disabilities of catholics, except as thereby excepted, provides (s. 6.) that nothing herein

33 Geo. 3. c. 21. s. 6. Ir.

shall authorize any papist, &c. to have or keep any arms, armour, ammunition, or any warlike stores, sword-

Catholics possessing a certain property, and taking certain oaths, qualified to have arms as protestants.

blades, barrels, locks, or stocks of guns, or fire-arms, or to exempt such person from any forfeiture or penalty inflicted by any act respecting arms, &c. in the possession of any papist, or respecting papists having or keep-

ing such warlike stores, save and except papists, &c. seised of a freehold estate of £100. a year, or possessed of a personal estate of £1000. (who are hereby autho-

rized to keep arms and ammunition as protestants now by law may); and also except papists, &c. possessing a freehold estate of £10. yearly value, and less than £100.

or a personal estate of £300. and less than £1000. who shall have, at the session of the peace in the county in which they reside, taken the oath prescribed by the

13 & 14

* The 15 & 16 Geo. 3. c. 21. Ir. (commonly called the White Boy Act) contains other provisions upon this subject, which will be stated in a subsequent chapter.

13 & 14 Geo. 3. c. 35. Ir. and also, in open court, swear and subscribe an affidavit, that they are possessed of a freehold estate, yielding a clear yearly profit of £10. or a personal property of £300. above their just debts, specifying therein the name and nature of such freehold, and nature of such personal property, which affidavits shall be preserved by the clerk of the peace, who shall have a fee of 6*d.* for every such affidavit; and the person making such affidavit, and possessing such property, may keep and use arms and ammunition, as protestants may, so long as he shall possess a property of the annual value of £10. if freehold, or the value of £300. if personal.

Converts to educate children protestants.

8 Ann. c. 3.
s. 12. Ir.

With respect to converts, the 8 Ann. c. 3. s. 12. Ir. provides, that every person that shall be converted from the popish to the protestant religion, and conform himself to the church of Ireland as by law established, and shall have any employment, office, or place of profit or trust, by virtue of any commission, grant, or authority from the crown, or be a member of either house of parliament, or practise as barrister at law, attorney, or solicitor, or officiate as officer in any court, shall cause all his children, under the age of 14 years at the time of the conversion of such parent, to be educated in the protestant religion, and for default thereof such employment, &c. shall be void, and such member of parliament shall be incapable to sit or vote in either house of parliament, and the party offending for ever incapable to hold any employment, &c. under the crown; and every such barrister, attorney, solicitor, and officer, shall be incapable of practising as barrister, &c. privately or publicly, or officiating in any court. Provided (s. 13.)

Penalty.

s. 13.

Proviso.

that nothing herein shall extend to the office of high constable, petty constable, tithingman, headborough, overseer of the poor, church-warden, surveyor of the high ways, or any like inferior civil office. And to remove the doubts whether the children of popish parents, who have been bred protestants, are to be reckoned as protestants or converts, the 6 Geo. 1. c. 6. Ir. enacts, that all children of popish parents, who from the age of 12 years have been constantly bred up in the protestant religion, and have received the sacrament of the

6 Geo. 1. c. 6.
s. 16. Ir.

Children of papists when deemed protestants

Lord's

Lord's supper in the church of Ireland as by law established, shall be reputed as protestants. Provided (s. 17.) that if such children shall, after they come to the age of 18 years, declare themselves of the communion of the church of Rome, or be present at matins or vespers, according to the practice of the church of Rome, they shall be subject to all penalties, as converted papists relapsing to popery are. And it is proper here to refer to the 33 Geo. 3. c. 21. s. 1. Ir. (*vide* vol. 1. p. 503.) which relieves papists, or persons professing the popish or Roman catholic religion, or educating their children in that religion, from all penalties and disabilities, save as herein excepted, without any distinction as to relapsed converts.

s. 17.

Proviso.

VII. With respect to contempts against the king's palaces: the 33 Hen. 8. c. 12. Eng. enacts, that all treasons, misprisions of treasons, murders, manslaughters, bloodsheds, and malicious strikings, by reason whereof blood is shed, against the king's peace, which shall be done within any of the palaces or houses of the king, or any other house, at such time as his majesty shall be then abiding in person, shall be inquired of, &c. within any the king's palaces or other houses, where his majesty shall repair unto, or be abiding, in manner following: *viz.* before the lord great master or lord steward of the king's household, and in his absence before the treasurer and controller of the household, and steward of the marshalsey, or two of them, whereof the steward of the marshalsey to be one, without any commission other than this act; which steward of the marshalsey shall be appointed by writing, under the seal of the lord great master or lord steward. And where the king shall be removed from the palace, &c. where such offences were done, yet such offences shall be inquired of, &c. before the officers before named, by the inquisition and verdict of his highness's household servants in his check-roll, and at such palace or house where his majesty shall be abiding. And by s. 2. all returns of process, and all executions and judgments concerning the premises, shall be done by the officers. By s. 3. all inquisitions upon the

§ 7.

Punishment of murders, &c. within the king's court.

33 Hen. 8. c. 12. s. 1. Eng.

Before whom tried.

s. 2.

Process, &c. by whom.

s. 3.

*Inquisitions of
persons slain
how to be.*

s. 4.

*Jury how re-
turned.*

s. 5.

*Number neces-
sary for this
inquest.*

s. 6.

*Arraignment of
offender.*

*Jury how re-
turned and cho-
sen to try of-
fender.*

*Punishment for
treasons, &c.*

view of persons slain within any the king's palaces, &c. shall be taken by the coroner of the houshold, without any assisting of another coroner of any shire, by the oath of 12 of the yeomen officers, returned by the 2 clerks controllers, the clerks of the check, and the clerks marshals, or one of them, to whom the coroner of the houshold shall direct his precept; which coroner shall be assigned by the lord steward; and the coroner of the houshold shall certify all such inquisitions upon the view of dead bodies slain within the said palaces, &c. before the lord steward, and in his absence before the treasurer, controller, and steward of the marshalsey, or 2 of them, whereof the steward to be one. And by s. 4. the said two clerks controllers, clerks of the check, and clerks marshals, or one of them, upon a precept made by the lord great master, &c. (as in s. 1.) shall have power to summon and return 24 yeomen officers of the houshold in the check roll, to inquire of such treasons, &c. (as in s. 1.) by reason whereof blood is shed against the king's peace, before the lord great master, &c. And by s. 5. it shall be lawful for the lord great master, &c. to cause such number of the 24 persons as to him shall seem expedient, above the number of 12, to inquire of such treasons, &c. By s. 6. if any be indicted before them as aforesaid, or by inquisition before the coroner, and certified before the lord great master, &c. the said lord great master, &c. shall arraign such persons indicted; and after issue joined the same day and place, or any other day and place, at the pleasure of the lord great master, &c. shall make another precept to the clerks controllers, clerks of the check, and clerks marshals, or one of them, to summon and return one other jury of 24 persons, of the servants and gentlemen officers of the king's chamber, and of the houshold, which take wages by the check-roll; and the lord grand master, &c. shall cause 12 of the jury to be sworn, without any challenge to be allowed, malice only excepted; and if any such person be found guilty of treason, misprision of treason, murder, or manslaughter, he shall have judgment of life and member, and forfeit lands and goods (as if found guilty of the said offences by the order of the

the said offences of the common law) without benefit of clergy. And by s. 7. if any person so arraigned be found guilty for malicious striking, by reason whereof blood is shed against the king's peace within the said palace, &c. such person shall have judgment by the said lord great master, &c. to have his right hand stricken off before the lord great master, &c. the execution to be done by such as the lord great master, &c. shall appoint, and also shall have judgment to have perpetual imprisonment, and shall pay fine and ransom at the king's pleasure. By s. 8. to 18. the serjeant or chief surgeon, or his deputy, shall be ready at the execution to sear the stump, when the hand is stricken off: The serjeant of the pantry to give bread to the party: The serjeant of the cellar with a pot of red wine, to give the party drink: The serjeant of the ewry with cloths for the surgeon to occupy: The yeoman of the chandry shall have seared cloths for the surgeon: The master-cook shall bring a dressing knife, and deliver it to the serjeant of the larder, who shall hold it upright till execution be done: The serjeant of the poultry shall be ready with a cock for the surgeon to wrap about the stump: The yeoman of the scullery to make a fire of coals, and make ready searing-irons: The serjeant or chief ferror shall bring the searing irons, and deliver them to the chief surgeon when they be hot: The groom of the salcery shall be ready with vinegar and cold water: The serjeant of the wood-yard shall bring a block, with a betil, a staple, and cords to bind the hand. By s. 19. if any person so indicted of treason, misprision of treason, murder, manslaughter, or malicious striking by reason whereof blood is shed, and thereof be arraigned, and obstinately refuse to answer, he shall be convict, and have judgment as if he were found guilty by verdict; and the clerks controllers, clerks of the check, and clerks marshal, or one of them, shall appoint a crier to make proclamations, call the juries, &c. Provided (s. 20.) that the trial of peers for any offences before mentioned, shall be as in time past. By s. 21. the jurisdiction of the marshalsey court, and circuit of the verge, shall be used by the officers of the same as heretofore, for murders, felonies,

s. 7.

Punishment for malicious striking.

s. 8. to 18.

Execution how to be.

s. 19.

*Punishment for standing mute.**Crier how appointed.*

s. 20.

Peers tried by their peers.

s. 21.

The liberty of the verge.

s. 22.
Coroner of the
king's house.

s. 24.
The limits of the
king's house.

s. 26.
Cases of striking
to which this
statute doth not
extend.

offences, and all trespasses, contracts, and other suits. By s. 22. the coroner shall be appointed by the lord great master, or lord steward. By s. 24. the limits of the houses within which the offences aforesaid shall be so punished, shall be within any edifices, courts, places, gardens, orchards, or houses within the porter's ward, or within any gardens, privy-walks, orchards, tilt-yards, wood-yards, tennis-plays, cock-fights, bowling-alleys, near adjoining to the houses, and being part of the same, or within 200 feet of the standard of any outward gate of the houses commonly used. By s. 26. this act concerning malicious strikings shall not extend to any person that shall strike his servants, within the palace, with his hands, or with any small stick, for correction for any offences; nor to any of the king's officers that in executing of their office shall strike any person with their hands, or with any small stick, or with a tip-staff; nor to any other that in doing service at any triumph, or any other time of service, by the king's command, or of any of his council, or other his head officers, shall, for the executing of their service, strike any person with their hands, or any small staff or tip-staff; except the person stricken die of the same within one year.

CHAP. VII.

Of Offences against Public Justice.

§ 1.
Penalty for
making false en-
try, rasing roll,
or changing
verdict.

8 Ric. 2. c. 4.
E. & L.

FIRST as to *embezzling or vacating records, or falsifying proceedings*: by the 8 Ric. 2. c. 4. E. & L. if any judge or clerk shall make a false entry, rase a roll, or change a verdict, (whereby ensueth disherison of any of the parties,) and be convict before the king and his council, within 2 years after such default, if the party grieved be of full age,

age, and if he be within age, then within 2 years after he shall come to his full age, he shall be punished by fine and ransom at the king's will, and satisfy the party. But the 8 Hen. 6. c. 12. s. 3. E. & I. further enacts, s. 3. E. & I. that if any record or parcel of the same writ, return, panel, process, or warrant of attorney, in chancery, exchequer, the one bench, or the other, or in the treasury, be willingly stolen, withdrawn, or avoided, by any clerk or other person, whereby any judgment shall be reversed, such stealer, &c. his procurators, counselors, and abettors, being thereof indicted, and convict by confession, or inquest of lawful men, (whereof one half shall be men of some one of the same courts,) shall be adjudged felons; and the judges of the one bench or the other shall have power to hear and determine such defaults. And by the 21 Jac. 1. c. 26. Eng. every person who shall acknowledge, or procure to be acknowledged, any fine, recovery, deed inrolled, statute, recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be guilty of felony, without benefit of clergy: Provided that such attainer shall not be any corruption of blood, nor loss of dower. And by s. 3. this act shall not extend to any judgment acknowledged by any attorney of record, for any person against whom such judgment shall be had or given. The 10 Car. 1. st. 3. c. 20. Ir. is the corresponding statute in Ireland. By the 4 W. & M. c. 4. s. 4. Eng. any person who shall, before any person empowered by virtue of this act to take bail, represent or personate any other person, whereby such person so represented, &c. may be liable to the payment of any sum of money for debt or damages to be recovered in the same suit or action, wherein such person is so represented, &c. shall be adjudged a felon. The 7 W. 3. c. 18. Ir. contains a corresponding provision.

Embezzling or vacating records, felony.

21 Jac. 1. c. 26. s. 1 & 2. Eng.

Felony to levy a fine, &c. in another's name not privy.

Blood not corrupted, &c.

s. 3.

Proviso.

10 Car. 1. st. 3. c. 20. Ir.

4 W. & M. c. 4. s. 4. Eng.

Felony to personate other as bail.

7 W. 3. c. 18. s. 4. Ir.

§ 2.

Felony for a gaoler to compel a prisoner to become an approver.

14 Edw. 3. st. 1. c. 10. E. & I.

II. By the 14 Edw. 3. st. 1. c. 10. E. & I. (which supersedes the 1 Edw. 3. st. 1. c. 7.) if any gaoler or under-gaoler, by too great duress of imprisonment, and by pain, make any prisoner become an appellor against his will, he shall have judgment of life and member.

III. With

§ 3.

*Punishment for
resisting the ex-
ecution of process
in certain pre-
tended privileg-
ed places.*

*8 & 9 W. 3. c. 27.
s. 15. Eng.*

III. With respect to the offence of *obstructing the execution of legal process*: the 8 & 9 W. 3. c. 27. s. 15. Eng. enumerates the several pretended privileged places in and about the cities of London and Westminster, and borough of Southwark; and the offence of resisting the execution of process in such places is thereby punishable with a fine of £50. with pillory and imprisonment at the discretion of the court; and in case of rescue with a fine of £500.; and in default of payment such offender so making such rescue, or aiding therein, is to be transported for 7 years. The offence of knowingly receiving, harbouring, or concealing any person convicted of such rescue, is also made subject to transportation for 7 years, unless such offender shall, within one month after such conviction, pay to the plaintiff in such action his debt and full costs; and any person transported under this act, who shall return within said period of 7 years, shall be guilty of a capital felony. And by the 9 Geo. 1. c. 28. s. 2. Eng. which relates to the place called the Mint in Surrey, to resist any officer in the execution of any legal process, within the limits thereof, or to rescue any prisoner taken upon such process, or to harbour or conceal any prisoner so taken, or any person who rescued such prisoner, or to be knowingly and willingly abetting or assisting in resisting such officer, or rescuing such prisoner, or to exercise any unlawful jurisdiction, or make or execute any rule or order for supporting any pretended privilege within said place, or for hindering the due execution of any legal process, &c. therein, is made a felony (in case of conviction within 6 months) punishable with transportation in like manner as other felonies. And it is thereby made a capital felony for any person wearing or having any disguise, within the limits of said place, to join in, or aid or abet any riot or tumult there, or in any disguise knowingly and willingly to oppose the execution of any legal process, &c. or assault and abuse any person serving or executing such process, &c. or for having done so: And all persons aiding, abetting, or knowingly harbouring or concealing any such disguised person, are declared guilty

guilty of felony, and to be transported. And by the 11 Geo. 1. c. 22. Eng. it is made a felony punishable with transportation for 7 years, for any number of persons, not less than 3, within the hamlet of Wapping-Stepney, or within the limits of the weekly bills of mortality of the cities of London and Westminster, to obstruct and oppose the service or execution of legal process, &c. and in making such obstruction, &c. to assault or abuse any person serving or executing such process, &c. whereby he shall receive bodily hurt. And any person resisting the execution of legal process, &c. therein, or rescuing any prisoner taken upon such process, or harbouring or concealing any such prisoner, or any person who rescued such prisoner, or knowingly and willingly abetting or assisting in resisting any such officer, or in rescuing any such prisoner, is thereby also declared guilty of felony, and punishable with transportation for 7 years. These statutes which I have thus briefly stated as being of a local nature, are peculiar to England.

IV. As to *escapes* suffered by officers, the 3 Edw. 1. c. 3. E. & I. enacts, that nothing be demanded nor taken, nor levied by the sheriff, nor by any other, for the escape of a thief, or felon, until it be judged for an escape by the justices in eyre; and that he who does otherwise, shall restore to him or them that have paid it, as much as he or they have taken or received, and as much also unto the king. And by the 31 Edw. 3. st. 1. c. 14. E. & I. the escape of thieves and felons, and the chattels of felons and fugitives, and also escapes of clerks convict out of their ordinary's prison, from henceforth to be judged before any of the king's justices, shall be levied from time to time. And by the 1 Ric. 3. c. 3. E. & I. justices of peace shall have authority to inquire in their sessions, of all manner of escapes of every person arrested and imprisoned for felony. And as to the punishment for such escapes: the 5 Edw. 3. c. 8. E. & I. recites, that persons indicted of felonies in times past, had removed the indictments before the king, and there yielded themselves, and by the marshals of the king's bench had been incontinently let to bail, &c. and therefore

11 Geo. 1. c. 22. Eng.

§ 4.

No penalty for an escape before it be adjudged.

3 Edw. 1. c. 3. E. & I.

31 Edw. 3. st. 1. c. 14. E. & I.

Escapes of felons to be levied.

1 Ric. 3. c. 3. E. & I.

Escape of felons inquirable by justices of peace.

5 Edw. 3. c. 8. E. & I.

Penalty of the marshal that suffereth an escape.

fore enacts, that such inditees, and appellees, shall be safely kept in prison, according to the charge which the said marshals shall have of the justices; and if any marshal shall do otherwise, at the complaint of every man that will complain, the justices shall do him right during the terms; and in the end of the terms, upon their rising, the said marshals shall choose before the said justices, before they depart their places, in what town they will keep such prisoners at their peril: And in the same town they shall allow to them houses to keep such prisoners at their own costs and charges; and there they shall keep them in prison, and shall not suffer them to go wandering abroad, neither by bail, nor without bail. And if any such prisoner be found wandering out of prison, by bail or without bail, and that be found at the king's suit, or at the suit of the party, the marshals which shall be found thereof guilty, shall have half a year's imprisonment, and be ransomed at the king's will; and the justices shall thereof make inquiry when they see time; and as to the marshals, it shall be done within the verge that which reason will. And in case that the marshals suffer by their assent such prisoners to escape, they shall be at the law, as before the time of the statute they had been. And the king intendeth not by this statute to lose the escape, where he ought to have the same.

§ 5. V. Concerning prisoners which *break prison*, the 1 Edw. 2. st. 2. E. & I. enacts, that none that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned, did require such judgment if he had been convict thereupon.

§ 6. VI. The 16 Geo. 2. c. 31. Eng. is a statute which seems peculiarly to belong to the head of *rescue*, considered as a distinct substantive offence. By this statute (s. 1.) if any person shall, by any means, be aiding or assisting to any prisoner to attempt to make his escape from any gaol, although no escape be actually made, in case such prisoner then was attainted or convicted of treason, or any felony, except petit larceny, or lawfully

fully committed to or detained in any gaol for treason, &c. expressed in the warrant of commitment or detainer, he shall be guilty of felony, and be transported for 7 years; and in case such prisoner then was convicted of, committed to, or detained in any gaol for petit larceny, or any other crime, not being treason or felony expressed in the warrant of his commitment, &c. or then was in gaol upon any process for any debt, damages, costs, sum or sums of money, amounting in the whole to £100.

*And where
deemed a mis-
demeanor.*

he shall be guilty of a misdemeanor, and be liable to fine and imprisonment. And by s. 2. if any person shall

s. 2.

convey, or cause to be conveyed into any gaol or prison, any vizor or other disguise, or any instrument or arms proper to facilitate the escape of prisoners; and the

*Conveying any
disguise, &c. to
help an escape,
when a felony:*

same shall deliver, or cause to be delivered, to any prisoner in such gaol, or to any other person there for the use of such prisoner, without the consent or privity of the keeper or under-keeper of such gaol, &c. such person, although no escape or attempt to escape be actually made, shall be deemed to have delivered such vizor, &c. with an intent to assist such prisoner to escape, or attempt to escape; and in case such prisoner then was attainted or convicted of, or lawfully committed to or detained in gaol for, treason, or any felony (except petit larceny,) expressed in the warrant of commitment

or detainer, such offender shall be guilty of felony, and be transported for 7 years; but in case the prisoner, to whom, or for whose use, such vizor, &c. shall be so delivered, then was convicted, committed, or detained for petit larceny, or any other crime (not being treason or felony) expressed in the warrant, &c. or upon any process for any debt, damages, costs, sum or sums of money, amounting in the whole to £100. such offender shall be guilty of a misdemeanor, and be liable to fine and imprisonment. And by s. 3. if any person, shall aid or

*And when a
misdemeanor.*

s. 3.

assist any prisoner, to attempt to make his escape from the custody of any constable, or other officer or person who shall then have the lawful charge of such prisoner, in order to carry him to gaol, by virtue of a warrant of commitment for treason, or any felony (except petit larceny,) expressed in such warrant; or if any person shall

*Felony to assist
any person to
escape from a
constable, being
charged with
treason or felo-
ny; or from any
boat, &c. carry-
ing felons for
transportation.*

be

be aiding or assisting to any felon to attempt to make his escape from on board any boat, &c. carrying felons for transportation, or from the contractor for the transportation of such felons, his assigns or agents, or any other person to whom such felon shall have been lawfully delivered for transportation, such offender shall be guilty of felony, and be transported for 7 years. Provided (s. 4.) that prosecutions for any of the said offences be commenced within one year after the offence. By s. 5.

s. 4.
*Limitation for
prosecutions.*

s. 5.

*Persons ordered
for transporta-
tion by this act,
and found at
large, how
punished.*

if any person who shall be ordered for transportation in pursuance of this act, shall return from transportation, or be at large in any part of Great Britain, without some lawful cause, before the expiration of the term for which he shall have been ordered to be transported, he shall be liable to the same punishment, and to the like methods of prosecution, &c. as other felons transported, or ordered to be transported are by the laws now in force.

15 & 16 Geo. 3.
c. 21. s. 19. Ir.

(17 & 18 Geo. 3.
c. 36. s. 7. Ir.)

*Breaking gaol
with intent to
rescue or escape,
a capital felony.*

And the 15 & 16 Geo. 3. c. 21. s. 19. Ir. (as amended by the 17 & 18 Geo. 3. c. 36. s. 7. Ir.) enacts that every person, whether he be a prisoner or otherwise, who shall by force or violence break any gaol or prison with an intention to rescue and enlarge any prisoner therein confined on account of any offence, though the same be not capital, shall be guilty of felony without benefit of clergy. And by s. 20. every person who shall rescue

s. 20.

*Rescuing per-
sons from con-
stables, &c.
when a felony.*

any person committed by a justice of peace on a *mittimus* for treason, felony, or any of the offences hereinbefore mentioned, (*viz.* tumultuous risings, &c.) punishable with death, from a constable, or any person legally authorized for that purpose, before the person so committed shall be lodged in gaol, shall be guilty of felony, without benefit of clergy.* Several other statutes in England and Ireland, contain also clauses incidentally providing for cases of rescue: which clauses will be found under the heads of the offences to which they more particularly relate.

§ 7.

VII. With respect to the offence of *returning from transportation*: The various statutes which annex the punishment

* *Vide* 15 & 16 Geo. 3. c. 21. s. 22 & 24. Ir. in the next chapter.

punishment of transportation to several crimes, contain provisions relative to this offence. Some of these have been already stated, and others will occur in the subsequent chapters of this digest. Returning from transportation.

VIII. By the 4 Geo. 1. c. 11. s. 4. Eng. any person who *taketh money or reward*, directly or indirectly, under pretence or upon account of helping any person to any stolen goods, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause him to be brought to his trial, and give evidence against him,) shall be guilty of felony, and suffer according to the nature of the felony committed in stealing such goods, as if such offender had himself stolen such goods. §. 8. Felony to take reward for helping to stolen goods.

And by the 6 Geo. 1. c. 23. s. 9. Eng. whoever shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any person for the said offence as in 4 Geo. 1. *supra*, shall be entitled to a reward of £40. and shall have the like certificate, and like payments made without fee, as any person may be entitled unto for the apprehending and convicting of highwaymen. 4 Geo. 1. c. 11. s. 4. Eng.

The 6 Geo. 1. c. 12. Ir. contains a clause corresponding to that of the 4 Geo. 1. c. 11. *supra*: And by the 8 Geo. 1. c. 9. s. 4. Ir. whosoever shall prosecute to conviction any person for the said offence, (as in the 4 Geo. 1. c. 11. Eng. and 6 Geo. 1. c. 12. Ir. *supra*, mentioned) shall be entitled to a reward of £5. for every such offender so convicted; which sum shall be raised and levied in like manner as the reward which any person may be entitled to for the apprehending any murderer or robber in any county of a city, or county of a town. 6 Geo. 1. c. 23. s. 9. Eng. Reward for apprehending, &c. such offenders.

IX. Next as to *receiving of stolen goods*, knowing them to be stolen: the 3 W. & M. c. 9. s. 4. Eng. enacts, that if any person shall buy or receive any goods or chattel that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, he shall be deemed an accessory to such felony after the fact, and shall incur the same punishment as an accessory, &c. after the felony committed. §. 9. Persons receiving stolen goods punishable as accessories.

And the 5 Ann. c. 31. s. 5. Eng. also enacts, that if any person shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be

be stolen; or shall receive, harbour, or conceal any
 * not printed. burglars, felons, or thieves, knowing them to be so; [*he]
 shall be taken as accessory to the said felonies; and
 being convicted by the testimony of one witness, or more,
 shall suffer death as a felon convict. And by the 4 Geo.

4 Geo. 1. c. 11.
 s. 1. Eng.

*Receivers of
 stolen goods
 transported for
 14 years.*

1 Ann. st. 2.
 c. 9. s. 2. Eng.

*Receivers of
 stolen goods may
 be prosecuted for
 a misdemeanor,
 though principal
 felon not con-
 victed.*

5 Ann. c. 31.
 s. 6. Eng.

22 Geo. 3. c. 58.
 s. 1. Eng.

*Receivers may
 be prosecuted
 for a misdemea-
 nor, whether
 principal be
 amenable or not.*

† This exception
 not in the
 2 & 24 Geo. 3.
 c. 45. Ir.

1. c. 11. s. 1. Eng. persons convicted of receiving or
 buying goods, knowing them to be stolen, and pardoned
 on condition of transportation generally, may be
 transported for 14 years. The 1 Ann. st. 2. c. 9.
 s. 2. Eng. recites, that the buyers and receivers of
 stolen goods do oftentimes convey away and conceal the
 principal felons; and therefore provides (s. 2.) that it
 shall be lawful to prosecute and punish every person buy-
 ing or receiving stolen goods, knowing the same to be
 stolen,† as for a misdemeanor, to be punished by fine
 and imprisonment, though the principal felon be not
 before convicted of said felony; which shall exempt the
 offender from being punished as accessory, if the prin-
 cipal shall be afterwards convicted. And the 5 Ann.
 c. 31. s. 6. Eng. also enacts, that if the principal felon
 cannot be taken, so as to be prosecuted and convicted
 for any such offence as in s. 5. *supra*, (*viz.* of burglary
 or felony) yet it shall be lawful to prosecute and punish
 every such person buying or receiving any goods stolen
 by such principal felon, knowing the same to be stolen,
 as for a misdemeanor, to be punished by fine or impris-
 onment, or other such corporal punishment, as the court
 shall think fit; although the principal felon be not be-
 fore convict of the said felony: which shall exempt
 the offender from being punished as accessory, if such
 principal felon shall be afterwards taken and convicted.
 And by the 22 Geo. 3. c. 58. Eng. in all cases where any
 goods or chattels, [†except, lead, iron, copper, brass,
 bell-metal, and solder,] (the receiving of which is
 provided for by the 29 Geo. 2. c. 30. *post*) shall have
 been feloniously taken or stolen, whether the offence
 of the person so taking or stealing the same shall
 amount to grand larceny, or some greater offence, or
 to petit larceny only, (except where the person actually
 committing

† The 4 Ann. c. 11. Ir. here adds, "or that shall otherwise be accessory to
 such felony before or after the fact."

committing the felony, shall have been already convicted of grand larceny, or some greater offence;) every person who shall buy or receive any such goods, &c. knowing the same to have been so taken, &c. shall be deemed guilty of a misdemeanor, and shall be punished by fine, imprisonment, or whipping, as the court of quarter-sessions, (who are hereby empowered to try such offender) or as any other court before which he shall be tried, shall think fit to inflict; although the principal be not before convicted of the said felony, and whether he is amenable to justice or not: and in cases where the felony actually committed shall amount to grand larceny, or to some greater offence, and where the person actually committing such felony shall not be before convicted, such offender shall be exempted from being punished as accessory, if such principal felon shall be afterwards convicted. And by s. 2. it shall be lawful for any one justice of peace, on complaint before him on oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place, by warrant, to cause every such dwelling house, &c. to be searched in the day time; and the person knowingly concealing the said stolen goods, or any part thereof, or in whose custody the same shall be found, being privy thereto, shall be guilty of a misdemeanor, and be brought before a justice of peace for the county, &c. and made amenable to answer the same, by like warrant of such justice, and being thereof convicted by due course of law, shall be punishable as aforesaid. By s. 3. every constable, [*headborough, or tithing-man,] in every county, &c. where there shall be officers, and every beadle within his ward, parish, or district, and every watchman during such time only as he is on his duty, shall and may apprehend every person who may reasonably be suspected of having, or any ways conveying, after sun-setting and before sun-rising, any goods suspected to be stolen, and the same, together with such persons, as soon as conveniently may be, to carry before any justice of peace for the county, &c. to be dealt with according

s. 2.

Power to search for stolen goods.

s. 3.

*Power to constables, &c. to seize suspected persons.*** not in the 23 & 24 Geo. 3. c. 45. 1r.*

to

to law; and such person so conveying such goods, knowing them to be stolen, shall be guilty of a misdemeanor, and be imprisoned for any time not exceeding 6 calendar months, nor less than 3 calendar months. And by

s. 4.

Power to persons to whom goods are offered to be sold, &c. to apprehend persons so offering them.

s. 4. every person to whom any goods which have been feloniously stolen or taken, shall be brought and offered to be sold, pawned, or delivered, shall (there being reasonable cause to suspect that such goods were stolen) apprehend, secure, and carry before a justice of peace for the county, &c. where the same goods shall be so brought, &c. (having it in his power so to do) the person

s. 5.

Person, under 15, discovering 2 receivers of stolen goods, pardoned for all felonies.

* "1st day of June 1784" in 23&24 Geo. 3. s. 45. Ir.

bringing or offering the same. By s. 5. if any person, being out of custody or in custody, if under the age of 15 years, upon any charge of felony within benefit of clergy, shall have committed any felony (after the 1st of August 1782), and shall afterwards discover 2 or more persons who shall have bought or received any goods feloniously stolen or taken from any other person, (after the said 1st of August, 1782,) knowing the same to be so stolen, so as 2 persons discovered shall be convicted of such buying or receiving, he shall be entitled to the king's pardon for all such felonies by him committed before such discovery made, which pardon shall be a bar to any appeal brought for such felony. Provided (s. 6.) that nothing herein shall repeal any former law for the punishment of such offenders; and provided also, that such offender after having been prosecuted and convicted under this act, shall not, for the same offence, be liable to be punished by any former law.

s. 6.

Provise.

Persons buying or receiving stolen lead, &c. transported for 14 years.

29 Geo. 2. c. 30. s. 1. Eng.

By the 29 Geo. 2. c. 30. Eng. every person who shall buy or receive any lead, iron, copper, brass, bell-metal, or solder, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any stolen lead, &c. by suffering any door, window, or shutter, to be left open or unfastened, between sun-setting and sun-rising, for that purpose, or shall buy or receive any of them, at any time, in any clandestine manner, shall, although the principal felon has not been convicted of stealing the same, be transported for 14 years. And by

s. 2.

s. 2. it shall be lawful for any one justice of peace, upon complaint

complaint made to him upon oath, that there is cause to suspect stolen lead, &c. is concealed in any dwelling house, out-house, yard, garden, or place, by his warrant to cause every such dwelling house, &c. to be searched in the day time; and if any lead, &c. suspected to be stolen, shall be found therein, to cause the same, and the person in whose house, &c. the same shall be found, to be brought before any 2 or more justices of the peace, for the same county, &c.; and if the said person shall not give an account, to the satisfaction of such justice, how he came by the same, or shall not, within some convenient time to be set by the said justices, produce the party from whom he bought or received such stolen lead, &c. such offender shall be guilty of a misdemeanor. And by s. 3. every constable, headborough, or tithingman, in every county, &c. where there shall be officers, and every beadle within his ward, parish, or district, and every watchman during such time only as he is on duty, shall apprehend, or cause to be apprehended, every person who may reasonably be suspected of having or carrying, or any ways conveying any lead, &c. suspected to be stolen, or unlawfully come by; and the same, together with such person, as soon as conveniently may be, to carry before any 2 or more justices of peace for the county, &c.; and if the person so apprehended conveying any such lead, &c. shall not produce the party from whom he bought or received the same, or some other witness to depose upon oath the sale or delivery of the said lead, &c. (which oath such justices are empowered to administer) or shall not give an account, to the satisfaction of any 2 of such justices, how he came by the same, he shall be guilty of a misdemeanor. By s. 4. where any person shall be convicted of either of the misdemeanors aforesaid, it shall be lawful for any 2 such justices to cause such lead, &c. to be deposited in the hands of the church-wardens or overseers of the poor of the place where such lead, &c. were found, or in any other convenient place, for any time not exceeding 30 days; and in the mean time to order such church-wardens, &c. or one of them, in every of the parishes within the bills of mortality, to insert an advertisement

Power to justices of peace, to search for stolen lead, &c.

Person with whom found to account for it, or punishable for a misdemeanor.

s. 3.

Power to constables, &c. to apprehend persons suspected of stealing lead, &c.

Misdemeanor, not to give a satisfactory account in such case.

s. 4.

Advertisement to be published for discovery of such lead, &c.

*If no owner
found in 30
days, lead, &c.
how disposed of.*

s. 5.

*Power to any
person to whom
stolen lead, &c.
shall be offered
to be sold, &c.
to apprehend
person offering
it.*

*Misdemeanor to
omit doing so.*

advertisement in some public paper, and in every other parish or place to cause notice to be given by some public crier, and by fixing on the church or chapel door, notice describing such lead, &c. and where the same shall be so deposited; and in case any person can prove property to said lead, &c. upon oath, to the satisfaction of any 2 such justices for such county, &c. then such justices shall order restitution of such lead, &c. to the owner, after paying the reasonable charges of removing, depositing, and giving public notice of the same; and if at the end of the said 30 days, no person shall prove his property, nor any reputable person on his behalf, to such lead, &c. the same to be sold for the best price that can be had; and after deducting the charges as aforesaid, one moiety of the money to be given to the person who shall apprehend the party guilty of either misdemeanor aforesaid, and the other to the poor of the parish where such offence shall be committed, if it is known where, or else where such conviction shall be made. By s. 5. every person to whom any lead, &c. shall be offered to be sold, pawned, or delivered, shall, there being reasonable cause to suspect that such lead, &c. was stolen or unlawfully come by, apprehend and carry before a justice of peace for the county, &c. where the same shall be so brought or offered, (having it in his power so to do) the person so bringing or offering the same, together with such lead, &c.; and such person shall be dealt with, and such lead, &c. shall be deposited and disposed of, in the same manner as if he had been apprehended by the constable, &c. as aforesaid; and if it shall appear upon the oath of any person, notwithstanding such person was concerned in the stealing the same, if corroborated with other circumstances, to the satisfaction of 2 justices of peace for the county, &c. where the same shall be so brought, &c. as aforesaid, that there was reasonable cause to suspect such lead, &c. was stolen or unlawfully come by, and that the person to whom such lead, &c. was so brought, did not (having it in his power so to do) apprehend and carry before a justice of peace as aforesaid, the person who so brought the same,

same, than the person to whom such lead, &c. was so brought, shall be guilty of a misdemeanor. By s. 6. every person deemed guilty of a misdemeanor in having in his possession any lead, &c. suspected to be stolen or unlawfully come by, and not producing the party of whom he bought or received the same, nor giving a satisfactory account how he came by the same, or in having or conveying of lead, &c. suspected to be stolen, &c. and not producing the party from whom he bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, nor giving a satisfactory account how he came by the same, shall forfeit for the 1st offence 40s. and for the 2nd offence £4. and for every subsequent offence £6; and every person guilty of the neglecting to apprehend and carry before a justice of peace, the person (having it in his power so to do) who brought or offered to sell, pawn, or deliver any lead, &c. suspected to be stolen, &c. shall forfeit for the 1st offence 20s. and for the 2nd offence 40s. and for every subsequent offence £4.; all such forfeitures to be levied by distress and sale of goods, by warrant of any 2 justices before whom such offender was adjudged guilty; which forfeiture shall be paid, one moiety to the informer, and the other to the overseers of the poor of the parish or place where such offence was committed, (if it is known where,) or else where such conviction shall be made; and if no sufficient distress, the justices may commit such offender to the common gaol, or other prison, or house of correction, within their jurisdiction, for one month for the 1st offence, and for the 2nd offence for 2 months, and for every subsequent offence until such offender shall be discharged by the court of general or quarter sessions. By s. 7. every conviction of the aforesaid misdemeanors, shall be certified by 2 justices of the peace making the same, to the next general or quarter-sessions, to be filed amongst the records of said sessions; and such conviction shall be drawn up on parchment, and certified in a form hereby prescribed, or to the like effect; which conviction shall not be set aside for want of form, nor removed by *certiorari*. By

s. 6.

Penalties for the several misdemeanors in this act.

s. 7.

Conviction certified and recorded.

Conviction final.

s. 8.

Person guilty of stealing lead, to be pardoned if he shall discover 2 receivers;

s. 8. if any person being out of prison, shall commit any felony by stealing any lead, &c. and afterwards discover

s. 9.

And discharged also from prosecution, in case of convicting any of a misdemeanor in not apprehending, &c.

2 persons who shall buy or receive any stolen lead, &c. knowing the same to be stolen, so as 2 persons shall be convicted of such buying or receiving, he shall be entitled to pardon for all such felonies committed before such discovery; which pardon shall be a bar to any appeal brought for such felony. And by s. 9. if any person shall be concerned in the stealing any lead, &c. and shall discover any person to whom he shall have offered

s. 10.

Limitation.

Pleading.

Costs.

to sell, pawn, or deliver any stolen lead, &c. so as such person be convicted of the misdemeanor of not apprehending and carrying him before a justice as aforesaid, the person making such discovery shall not be liable to be prosecuted for stealing such lead, &c. By s. 10. if any action be brought against any justice of peace or other officer, for doing any thing in pursuance of this act concerning the said offences, the same shall be commenced within 6 months after such cause of action, and the defendant may plead the general issue, &c. and shall have treble costs of verdict, nonsuit, or discontinuance.

s. 11.

Proviso.

21 Geo. 3. c. 69. Eng.

Punishment for buying or receiving pewter vessels knowing them to be stolen

Provided (s. 11.) that nothing herein shall repeal any former law for the punishment of such offenders, and provided also that such offender, after being punished by this act, shall not for the same offence be punished by any former law. And this act is explained and amended by the 21 Geo. 3. c. 69. Eng. which enacts, that every person who shall buy or receive any pewter

pot, or other vessel, or any pewter in any form, knowing the same to be stolen, or unlawfully come by; or shall privately buy or receive any stolen pewter, by suffering any door, window, or shutter, to be left open or unfastened, between sun-setting and sun-rising, for that purpose; or shall buy or receive the same, at any time, in a clandestine manner; shall, (although the principal felon has not been convicted of stealing the same,) be transported as other felons, for any time not exceeding 7 years, or be detained in prison, and therein kept to hard labour, for any time not exceeding 3 years, nor less than one year; and within that time (if such court shall think

think fitting) such offender shall be once or oftener, but not more than 3 times, publicly whipped. The 10 Geo. 3. c. 48. Eng. also enacts, that every person who shall buy or receive any stolen jewel, or any stolen gold or silver plate, or watch, knowing the same to have been stolen, shall, in all cases where such jewel, or gold or silver plate,* shall have been feloniously stolen, accompanied with a burglary actually committed in the stealing the same, or shall have been feloniously taken by a robbery on the highway, shall be triable as well before conviction of the principal felon, whether he shall be in or out of custody, as after his conviction: and any person so buying or receiving such jewel, or gold or silver plate,* shall be guilty of felony, and be transported for 14 years.

10 Geo. 3. c. 48. Eng.

Felony to buy or receive stolen jewels, &c.

*"Watch" here omitted.

Such felons transported.

In Ireland the 9 W. 3. c. 7. Ir. and 8 Ann. c. 8. Ir. contain clauses corresponding to those of the 3 W. & M. c. 9. s. 4. and 5 Ann. c. 31. s. 5. & 6. *ante* p. 587. And the 4 Ann. c. 11. Ir. contains also a clause corresponding to the 1 Ann. st. 2. c. 9. s. 2. *ante* p. 588. but further provides, that if any harbourer of any felon shall discover and prosecute 2 or more such harbourers, so as they shall be taken and convict at the prosecution of such discoverer, such harbourer shall be pardoned and acquitted for his former crimes of harbouring only. No statute in Ireland makes the receivers of stolen goods (after the conviction of the principal offender) liable to transportation for 14 years, in like manner as the 4 Geo. 1. c. 11. Eng. *ante* p. 588. Nor is there any Irish statute similar to the 29 Geo. 2. c. 30. Eng. 21 Geo. 3. c. 69. Eng. or 10 Geo. 3. c. 48. Eng. But the 23 & 24 Geo. 3. c. 45. Ir. has followed the 22 Geo. 3. c. 58. Eng. with such deviation only, as is noted in the margin. By the 27 Geo. 3. c. 52. Ir. if any person shall buy any old lead, or any iron bar, or rail, or iron or brass knocker, from any person, except the lawful owner of the same, or some person duly authorized by such owner to sell the same, or at any place, except the house or place of abode of such owner or person authorized to sell the same, he shall be deemed a receiver of such goods, knowing them to be stolen,

Receivers of stolen goods how punished in Ireland.

9 W. 3. c. 7. Ir.
8 Ann. c. 8. Ir.
4 Ann. c. 11. Ir.

23 & 24 Geo. 3. c. 45. Ir.

27 Geo. 3. c. 52. Ir.

Buyers of lead, &c. when deemed receivers of stolen goods.

s. 2.

*Persons to whom
lead, &c. brought
to be sold, &c.
to apprehend
the person
bringing it:*

*Or guilty of a
misdemeanor.*

s. 3.

*Reward for ap-
prehending per-
sons selling
lead, &c.*

s. 4.

*Person in whose
custody lead,
&c. found, how
dealt with.*

28 Geo. 3. c. 49.
s. 7. 1r.

*Persons altering
or defacing
names or crests
on watches,
plate, &c.
deemed receivers
of stolen goods.*

stolen, and shall be liable to such prosecution and punishment, as receivers of stolen goods are liable to. And by s. 2. if any person shall bring any old lead, &c. to be sold or pawned, the person to whom such article shall be brought, shall apprehend the person bringing the same, and carry him to some justice of peace of the county or city, who, upon examination of the party, if he shall not give a satisfactory account of the manner of his obtaining the same, shall commit him to the common gaol, upon suspicion of his having stolen the same; and if the person to whom such lead or other article shall be so brought, shall not apprehend and carry such person so bringing the same, before a justice of peace, he shall be guilty of a misdemeanor, and be punished by fine or imprisonment, upon conviction by due course of law. By s. 3. if any person to whom any old lead, &c. shall be so brought to be sold, shall so apprehend and prosecute to conviction the person so bringing the same, he shall be entitled to a reward of £5. to be raised by presentment of the grand jury of the county or city where the fact shall be committed, and to be applotted and levied as other public money. By s. 4. on search made by virtue of the warrant of any justice of peace within his jurisdiction, if any old lead, &c. shall be found in the possession of any person, such person may be brought before such justice, or any other justice of the county or city, who, if such person shall not give a satisfactory account of the manner of his obtaining the same, shall commit him to the common gaol upon suspicion of his having received the same, knowing it to be stolen; and upon the trial of such offender, the proof of his having fairly bought or obtained the same, shall lie upon such offender. By the 28 Geo. 3. c. 49. s. 7. 1r. no person shall, upon any pretence, change, alter, or deface the name engraved upon any watch, as the maker or owner thereof, or the number of such watch, or the place where made, or any coat of arms, or crest thereon, or on any part or case thereof; nor shall any person change, &c. the name, cypher, crest, or arms, engraved upon any article or piece of family plate, whether

ther gold or silver, without the consent of the owner thereof in writing, or of some person duly authorized to sell the same, or give such consent, unless such articles as aforesaid shall, before that time, be fairly and openly sold by a respectable auctioneer, at a public auction duly advertised; and in case any person shall so alter, &c. the name, &c. on any watch, or on any article or piece of family plate, or shall employ any person so to do, or be in any wise assisting in the doing the same, or in causing or procuring the same to be done, every such person not being authorized, or not having bought said articles at public auction as aforesaid, shall be indictable, triable, and punishable as receivers of stolen goods, knowing the same to be stolen. And by the 26 Geo. 3. c. 43. s. 19. Ir. in case any person confined for debt, or other cause, in any marshalsea or prison, [shall lend money on any pawn or pledge, or give money for any pawn or pledge,] or shall buy or receive goods of any kind which shall have been stolen, or clandestinely obtained, every person so offending, due proof thereof being made on the oath of one witness, before any two justices of peace acting for the county or district wherein such prisoner is confined, shall be committed to the felon's gaol of said county, &c. by warrant of said justices, notwithstanding any action or execution which such prisoner shall then be charged with, and confined for, without injury to the marshal or keeper of said prison; and said warrant shall not only state such offence, and the fine incurred thereby, but also shall specify the several actions, executions, or causes, upon which said prisoner then stands committed, and that said offender shall remain in actual and close custody in the felon's gaol for 3 months, and shall also pay such fine not less than £10. nor more than £20. as such justices shall think proper, to be levied by warrant of such justices, by distress and sale of offenders goods; which fine when levied, shall be paid to the minister or churchwardens of the parish wherein the offender resides, for the use of the poor thereof; and in case of non-payment of said fine, such offender shall be further imprisoned, and

26 Geo 3. c.43.
s. 19. Ir.

*Confined debtors
buying stolen
goods, &c. how
punished.*

and kept to hard labour, for any term not exceeding 6 months, nor less than 3 months, unless said fine shall be sooner paid, and also shall return the goods so received by such offender, to the owner thereof, or shall still further continue in said felon's common gaol, until satisfaction shall be made equal to the value of said goods to such owner. Many other statutes providing for this offence of receiving goods knowing them to be stolen, will be found under the head of larceny in a subsequent part of this work.

§ 10.

Several cases of theft-bote, how punished.

25 Geo. 2. c. 36. s. 1. Eng.

23 & 24 Geo. 3. c. 45. s. 9. Ir.

X. Next as to the offence of *theft-bote*: By the 25 Geo. 2. c. 36. s. 1. Eng. any person publicly advertising a reward with no questions asked, for the return of things which have been stolen or lost, or making use of any words in such advertisement, purporting that such reward shall be given or paid without seizing or making inquiry after the person producing such thing so stolen, &c. or promising or offering in such advertisement, to return to any pawn-broker, or other person, who may have bought or advanced money by way of loan upon such thing so stolen, &c. the money so paid or advanced, or any other sum of money or reward for the return of such thing; and any person printing or publishing such advertisement, shall respectively forfeit £50. to any person who will sue for the same. The 23 & 24 Geo. 3. c. 45. Ir. contains a clause precisely similar.

§ 11.

Maliciously suing in the name of another person, how punished.

8 Eliz. c. 2. s. 4. Eng.

XI. To the head of *barretry*, may be referred the clause (s. 4.) of the 8 Eliz. c. 2. Eng. which enacts, that if any person shall by any way or mean, maliciously, or for vexation and trouble, cause or procure any other person to be arrested, or attached to answer in any the courts or places aforesaid, (*viz.* in the court of king's bench, the court called the marshalsea, or courts within places having privilege to hold pleas of debt, trespass, and other personal actions,) at the suit or in the name of any person, where there is no such person known, or without the assent, consent, or agreement of such person at whose suit, &c. such arrest, &c. shall be so had and procured, such person being convicted or lawfully accused by indictment, presentment, or by the testimony

timony of 2 witnesses, or other due proof, shall suffer imprisonment for 6 months; and before he shall be delivered out of prison, shall pay unto the party so arrested, &c. treble the costs, charges, damages, and expenses, that he shall be put to by such arrest, &c.; and shall also forfeit unto such person in whose name or at whose suit he shall so procure such arrest, &c. to be made, if then there shall be any such person known, the sum of £10. for every such offence. The 12 Geo. 1. c. 29. Eng.

which restrains attornies, &c. convicted of barretry, and other such crimes, from practising, has been already stated *ante* p. 21. And by the 43 Eliz. c. 6. s. 1. Eng.

if any sheriff, or other person having authority to break

43 Eliz. c. 6.
s. 1. Eng.

writs, make any warrant for the summons of any person, as upon any writ, process, or suit, or for the arresting or attaching of any person by his body or goods, to appear in any of her majesty's courts at Westminster, or elsewhere,

*Sheriffs, &c.
issuing warrants
without authority
of writs,
how punished.*

(not having before that the original writ or process warranting the same); then upon complaint thereof made to the justices of assize of the county, or to the judges of the court out of which the process issued, not only the party that made such warrant, but the procurers thereof, shall be sent for by attachments, or otherwise, as the judges shall think good, and be examined upon their oaths: And if the offence be confessed, or proved by witnesses, the judges shall commit the offenders to the gaol of the county, or court where the same shall be examined, until they have satisfied the party grieved, not only the sum of £10. but also all such costs and damages, as the judges shall set down that the party hath sustained thereby; and £20. a-piece for their offence to her majesty.

And by the 6 Geo. 1. c. 21. s. 53. Eng. if any sheriff, under-sheriff, or their deputies, clerks, or agents, shall make or cause to be made or delivered out to any person, any warrant, either blank or filled up, before they shall have in their custody the writ upon which such warrant ought to issue, such offender shall forfeit £10.

6 Geo. 1. c. 21,
s. 53. Eng.

There is no statute in Ireland similar to these above mentioned. The 3 Edw. 1. c. 29. E. & I. may be here also stated, which enacts, that if any serjeant, pleader,

3 Edw. 1. c. 29.
E. & I.

or

*Penalty for
mal-practice in
deceiving court
or party.*

or other, do any manner of deceit or collusion in the king's court, or consent unto it in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned in like manner for a year and a day at least; and if the trespass require greater punishment, it shall be at the king's pleasure.

§ 12.

*Penalty for
maintenance of
any matter
pending in the
king's court.*

3 Edw. 1. c. 28.
E. & I.

XII. The offence of *maintenance*, is restrained by the 3 Edw. 1. c. 28. E. & I. which enacts, that none of the king's clerks, nor of any justices, shall receive the presentment of any church, for the which any plea or debate is in the king's court, without special license of the king, upon pain to lose his service: And no clerk of any justice, or sheriff, shall take part in any quarrels of matter depending in the king's courts, nor shall work any fraud, whereby common right may be delayed or disturbed; and if any so do, he shall be punished by the pain aforesaid, or more grievously, if the trespass do so

3 Edw. 1. c. 33.
E. & I.

*No maintainers
of quarrels shall
be suffered.*

require. And by the 3 Edw. 1. c. 33. E. & I. no sheriff shall suffer any barretors or maintainers of quarrels in their shires, neither stewards of great lords, nor other, (unless he be attorney for his lord) to make suit, nor to give judgment in the counties, nor to pronounce the judgments, if he be not specially required and prayed of all the suitors, and attornies of the suitors, which shall be at the court; and if any do, the king shall punish grievously both the sheriff, and him that so doth. The

1 Edw. 3. st. 2.
c. 14. E. & I.

*King's counsel-
lors, &c. prohi-
bited to commit
maintenance.*

1 Edw. 3. st. 2. c. 14. E. & I. further ordains, that none of the king's counsellors, nor of his house, nor any other of his ministers, nor any great man of the realm, by himself or by other, by sending of letters or otherwise, nor any other person, shall take upon them to maintain quarrels, or parties in the country, to the let of the common law. And by the 4 Edw. 3. c. 11.

4 Edw. 3. c. 11.
E. & I.

*Justices of as-
size, &c. shall
inquire of main-
tainers, &c.*

E. & I. the justices of the one bench and the other, and the justices of assizes, whensoever they come to hold their sessions, or to take inquests upon *nisi prius*, shall inquire,

inquire, &c. as well at the king's suit, as at the suit of the party, of maintainers, bearers, and conspirators, and also of them that commit champerty, as well as justices in eyre should do if they were in the same county. And that which cannot be determined before the justices, upon the *nisi prius*, for shortness of time, shall be adjourned into the place whereof they be justices. The

1 Ric. 2. c. 4. E. & I. further enacts, that none of the king's counsellors, officers, or servants, nor any other

within the realm, shall take or sustain any quarrel by maintenance, upon grievous pain; viz. the counsellors and king's great officers upon a pain which shall be or-

Penalties of maintainers of quarrels.

derained by the king himself, by the advice of the lords of his realm; and other less officers and servants of the king, as well in the exchequer, and all his other courts and places, as of his own meiny, upon pain to lose their offices, and to be imprisoned, and then to be ransomed at the king's will, according to their degree, estate, and desert; and all other persons upon pain of imprisonment, and to be ransomed as aforesaid. And by the

1 Ric. 2. c. 7. E. & I. no livery shall be given to any man for maintenance of quarrels, or other confederacies,

1 Ric. 2. c. 7. E. & I.

upon pain of imprisonment, and grievous forfeiture to the king: And the justices of assize shall diligently inquire of them that gather themselves in fraternities by such livery to do maintenance. The statutes against

Punishment of them that give liveries for maintenance.

maintenance are further confirmed by the 20 Edw. 3. c. 4. E. & I. and 7 Ric. 2. c. 15. E. & I. And by the

20 Edw. 3. c. 4. E. & I.

13 Ric. 2. st. 3. E. & I. no man of the church, nor es-

7 Ric. 2. c. 15. E. & I.

quire, nor other of lower estate, shall give livery of com-

13 Ric. 2. st. 3. E. & I.

pany; and no duke, earl, baron, or baneret, shall give livery to knight or esquire, if he be not retained

with him for term of life, for peace and war, by indenture, or his menial abiding in his house, nor to any yeo-

man or other of lower estate, unless he be of his household. And no lord nor other who hath people of his re-

tinue, shall suffer any of them to be a maintainer, barretor, or procurer of quarrels; and if any lord turn away any such maintainer, &c. for such cause, no other

lord shall receive him. And no man shall undertake or

maintain

maintain any quarrel but his own. And this ordinance shall be kept upon pain of imprisonment, fine and ransom, or other punishment by consideration of the king and his council. By the 32 Hen. 8. c. 9. Eng. all statutes concerning maintenance, champerty, and embracery, shall be put in execution. And by s. 3. no person shall unlawfully maintain, or cause or procure any unlawful maintenance, in any action or suit in the chancery or elsewhere, where any persons have authority by commission, patent, or writ, to hold plea of lands, or any matter concerning the title of lands; and no person shall unlawfully retain for maintenance of any suit any person, or embrace any freeholders or jurors, or suborn any witness, by letters, rewards, promises, or other similar means, to maintain any cause, or to the hindrance of justice, or procurement of perjury by false verdict or otherwise, upon pain to forfeit £10. the one moiety to the king, and the other moiety to him that will sue for the same by action of debt, &c. in any of the king's courts. By s. 5. the justices of assize in every county within their circuits, shall, two times in the year, viz. in the time of their sittings for the taking of assizes or delivery of the gaols, cause open proclamation to be made as well of this act, as of all other statutes against maintenance, champerty, embracery, or unlawful retainers. Provided (s. 6.) that this act shall not charge any person with any of the penalties mentioned in said act, except he be sued by action of debt, &c. in any of the king's courts, within one year after the offence committed. The 10 Car. 1. st. 3. c. 15. Ir. contains the same provisions, and enacts (s. 1.) that all the statutes concerning maintenance, champerty, and embracery, made in England, shall be put in execution in Ireland. But this act contains a saving for the jurisdiction of the court of castle chamber. This offence of maintenance was also the object of several ancient statutes in Ireland, of which the following, though antiquated, remain unrepealed. By the 10 Hen. 7. c. 6. Ir. whatsoever citizen, burgess, or freeman, inhabiting within any city or town, shall receive any livery or wages, or make other promise

32 Hen. 8. c. 9.
s. 1. Eng.

Statutes against
maintenance,
&c. confirmed.

s. 3.

Penalties of
maintenance, &c

s. 5.

Offences where
tried.

s. 6.

Penalties when
sued for.

10 Car. 1. st. 3.
c. 15. Ir.

10 Hen. 7. c. 6.
s. 1. Ir.

or surety, by indenture or otherwise, with any lord or gentleman, shall be deprived of his freedom, and expelled out of such city. And by s. 3. if the mayor or head officer do not execute this ordinance, he shall forfeit to the king £20. And by s. 4. no lord or gentleman shall retain by livery, wages, or promise, sign or token, by indenture or otherwise, any person, but only such as be his officers, as bailiffs, steward, counsel, receivers, and menial servants daily in household, at the lord's costs. And if any lord or gentleman retain any person contrary to this act, then (being duly proved and examined by the king's council, or 2 of them) the retainer, and he that is retained, shall forfeit to the king £20.: This act not to extend to the marches, so that the marchers do present the names, by indenture, of all such as they have in their retinue, such as they shall answer for to the king's lieutenant. And by the 10 Hen. 7. c. 20. Ir. no person shall take part with any lord or gentleman, or uphold any variances or comparisons (between them) in word or deed, as in using these words *Cromabo*, *Butlerabo*, or other like words, or otherwise contrary to the king's laws, his crown and dignity, and peace, but to call only on St. George, or the name of his sovereign lord the king of England. And if any offend in the premises, he shall be committed to ward, till he have made fine after the discretion of the king's deputy, and the king's council.

Penalty of citizen, &c. receiving livery, &c. from any lord, &c.

s. 3.

Penalty of mayor, &c. not executing this ordinance.

s. 4.

Penalty of lord, &c. retaining any except his officers, &c.

10 Hen. 7. c. 20. Ir.

Penalty of maintaining the quarrels of lords, &c.

XIII. With respect to *Champerty*: By the 3 Edw. 1. § 13. c. 25. E. & I. no officer of the king, by themselves, nor by other, shall maintain pleas, suits, or matters hanging in the king's courts, for lands, or other things, for to have part or profit thereof by covenant made between them; and he that doth shall be punished at the king's pleasure. And by the 13 Edw. 1. st. 1. c. 49. E. & I. the chancellor, treasurer, justices, nor any of the king's council, nor clerk of the chancery, nor of the exchequer, nor of any justice or other officer, nor any of the king's house, clerk or lay, shall not receive any church, nor advowson of a church, land, nor tenement in fee, by gift nor by purchase, nor to farm, nor by champerty,

Penalties of champerty.

3 Edw. 1. c. 25. E. & I.

13 Edw. 1. st. 1. c. 49. E. & I.

Great officers, &c. prohibited to commit champerty.

nor

28 Edw. 1. st. 3.
c. 11. E. & I.

*Penalties of
champerty de-
fined.*

33 Edw. 1. st. 3.
E. & I.

*Pleaders, attor-
nies, &c. prohi-
bited to commit
champerty.*

Penalty.

32 Hen. 8. c. 9.
s. 2. Eng.

*Penalties of
champerty, how
disposed of.*

10 Car. 1. st. 3.
c. 15. Ir.

§ 14.

nor otherwise, so long as the thing is in plea, nor shall take reward; and he that doth contrary shall be punished at the king's pleasure, as well he that purchaseth as he that doth sell. The 28 Edw. 1. st. 3. c. 11. E. & I. also enacts, that no officer nor other, to have part of the thing in plea, shall take upon him the business in suit; nor none upon any such covenant shall give up his right to another. And if any do, and he be attainted thereof, the taker shall forfeit unto the king so much of his lands and goods as doth amount to the value of the part that he hath purchased for such maintenance. And for this attainder, whosoever will shall be received to sue for the king before the justices before whom the plea hangeth. But no person shall be hereby prohibited to have counsel of pleaders or men learned in the law for his fee, or of his parents or next friends. And by the 33 Edw. 1. st. 3. E. & I. no pleaders, apprentices, attornies, stewards of great men, bailiffs, nor others, shall take for maintenance or the like bargain, any manner of suit or plea against others; and all such as shall be attainted of such bargains, and such as consent thereto, shall have imprisonment of 3 years, and shall make fine at the king's pleasure. The 32 Hen. 8. c. 9. Eng. (*vide* p. 602.) enacts (s. 2.) that no person shall buy, sell, or obtain any pretended rights or title of any person in or to any lands or hereditaments, (except such persons which shall sell, covenant, or promise the same, or they by whom they claim, shall have been in possession of the same, or of the reversion or remainder thereof, or taken the rents or profits thereof, one year next before the bargain made,) upon pain that he that shall make any such sale, &c. shall forfeit the whole value of the lands so bargained, &c. and the buyer, knowing the same, to forfeit also the value of the said lands; the one half to the king, and the other to the party that will sue for the same by action of debt, &c. in any of the king's courts of record. The 10 Car. 1. st. 3. c. 15. Ir. contains a clause precisely similar.

XIV. I have reserved for this place the clauses of the 18 Eliz. c. 5. Eng. (*vide* p. 115-6. *ante*) which relate to the

the offence of *compounding informations*. By s. 3. of this statute, no informer or plaintiff shall compound or agree with any person that shall offend, or be surmised to offend, against any penal statute, but after answer made in court unto the information or suit in that behalf exhibited or prosecuted; nor after answer, but by the order or consent of the court in which the same information, &c. shall be depending. And by s. 4. if any person (except the clerks of the court only, for making out of process otherwise than is hereby appointed) shall offend in suing out of process, making of composition, or other misdemeanor, contrary to this statute; or shall by colour of process, or without process, upon pretence of any matter of offence against any penal law, make any composition, or take any money, reward, or promise of reward, for himself, or to the use of another, without order or consent of some of her majesty's courts at Westminster, such offender shall stand on the pillory in some market town next adjoining to the place where the offence shall be committed, in the open market time, and there remain for 2 hours; and shall after such conviction be for ever disabled to pursue, or be plaintiff or informer in any suit or information upon any statute popular or penal; and shall forfeit £10. one half to the crown, and the other to the party grieved, to be recovered in any court of record, by action of debt or information, wherein, &c. And the justices of *oyer and terminer*, justices of assize in their circuits, and justices of peace in their quarter-sessions, shall have authority to determine all offences contrary to this act. There is in Ireland no statute corresponding to the 18 Eliz. c. 5. *supra*.

No informer to compound informations without leave of court.

18 Eliz. c. 5.
s. 3. Eng.

s. 4.

Penalty for informer compounding.

XV. Next as to the offence of *conspiracy*: By the 33 Edw. 1. st. 2. E. & I. conspirators are defined to be they that do confederate or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict, or cause to be indicted, or falsely to move or maintain pleas; and also such as cause children within age to appeal men of felony; and such as maintain men in the country,

§ 15.

Description of the crime of conspiracy.

33 Edw. 1. st. 2.
E. & I.

33 Edw. 1. st. 3.
E. & I.

Writ of conspi-
racy.

country with liveries or fees to maintain their malicious enterprizes: And this extendeth as well to the takers as the givers, and to stewards and bailiffs of great lords, which by their seigniory, office, or power, undertake to maintain quarrels, pleas, or debates, that concern other parties than their lords or themselves. And by the 33 Edw. 1. st. 3. E. & I. conspirators, inventors, and maintainers of false quarrels, and partakers thereof, and brokers of debates, shall be attached that they be before the king by this writ: *Rex vic. salutem. Præcipimus tibi, quod si A. de G. fecerit te securum de clamore suo prosequendo, tunc pone per vadium et salvos plegios G. ut C. quod sit coram nobis in octabis sancti Johannis Baptiste, ubicunque tunc fuerimus in Anglia, ad respondendum prædicto A. de placito conspirationis et transgressionis, secundum ordinationem nostram nuper inde provisam, sicut idem A. rationabiliter monstrare poterit, quod ei inde respondere debeat. Et habeas ibi nomina plegiorum, et hoc breve. Teste, &c.* The statutes relative to the offences of sending threatening letters, and of combinations, which might be referred to this head, will be found in the chapters immediately following.

§ 16.

Punishment of
perjury.

5 Eliz. c. 9.
s. 6. Eng.

† "Or" in
28 Eliz. c. 1.
Ir.

XVI. By the *5 Eliz. c. 9. s. 6. Eng. if any person, either by the subornation, unlawful procurement, or means of any other, or by his own act, consent or agreement, wilfully [†and] corruptly commit any wilful perjury, by his deposition in any of the queen's courts of record, [‡or in any leet, ancient demean court, hundred court, court baron, or in the courts of the stannary in Devon or Cornwall,] or being examined *ad perpetuam rei memoriam*, such offender shall forfeit £20. and have imprisonment for 6 months; and the oath of such person shall not be received in any court of record, until the judgment be reversed by attainr or otherwise: and upon such reversal the parties grieved to recover their damages,

* This statute is incorrectly stated by Sir W. Blackstone.

‡ In the courts of Ch. K. B. C. B. Exc. or any other court, as well within the liberties as without," are the words in 28 Eliz. c. 1. Ir.

ges, against such as did procure the judgment to be given against them, by action on the case. And by s. 7. if the offender have not goods to the value of £20. he shall be set on the pillory in some market-place within the shire, city, or borough, where the offence shall be committed, by the sheriff, or his ministers, if it be without any city or town corporate; and if within such city, &c. then by the head officer, &c. and there have both his ears nailed, and be disabled for ever to be sworn in any of the courts of record aforesaid, until the judgment be reversed, and thereupon to recover his damages. And this statute also provides (s. 3.) that all persons which shall unlawfully [*and] corruptly procure any witness by letters, rewards, promises, or other sinister means, to commit any wilful and corrupt perjury in any matter depending in suit, by writ, action, bill, complaint, or information, concerning any lands, &c. goods, debts, or damages, in any of the courts aforesaid, (*vide* s. 6. *supra*.) or shall unlawfully and corruptly procure or suborn any witness sworn to testify *in perpetuam rei memoriam*, such offender shall forfeit £40. And by s. 4. if such offender have not goods or lands, &c. to the value of £40. he shall suffer imprisonment for one half year, and stand upon the pillory, one hour, in some market town next adjoining to the place where the offence was committed, in open market there, or in the market town itself where the offence was committed. And by s. 5. no person so convicted shall be received as a witness in any court of record, until the judgment given against the said person be reversed by attainr or otherwise; and upon every such reversal, the parties grieved to recover their damages against such as did procure the said judgment to be first given against them, by action upon the case. By s. 8. one moiety of the money forfeited as aforesaid, to be to the crown, and the other to the person grieved that will sue by action of debt, &c. in any court of record. By s. 9. as well the judges of the said courts where any perjury shall be committed, as also the justices of assizes and gaol delivery, and the justices of peace at their quarter sessions, shall have power to inquire, &c. of all offences contrary to this act, by inquisition, presentment,

s. 7.

s. 3.

Punishment of subornation of perjury.

* "Or" in 28 Eliz. c. 1, 1r.

s. 4.

s. 5.

s. 8.

Penalties have disposed of.

s. 9.

Offences where tried.

- s. 10. *Act to be proclaimed.* sentment, bill or information, or otherwise. By s. 10. the justices of assize shall in every county two times in the year, in their sittings, make proclamation of this statute. By s. 11. this act shall not extend to any ecclesiastical court, but such offenders may be punished by such laws as heretofore used in such courts. And by s. 13. this act shall not restrain the power of any judge, having absolute power to punish perjury before, so that they set not upon the offenders less punishment than is contained in this act.* The 2 Geo. 2. c. 25. Eng. further provides, (s. 2.) that besides the punishment already to be inflicted, it shall be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, to order such person to be sent to some house of correction within the county, for a term not exceeding 7 years, to be kept to hard labour; or to be transported for a term not exceeding 7 years, as the court shall think proper; and judgment shall be given that such person shall be so committed or transported, besides such punishment as shall be inflicted by the laws now in being; and if any person so committed or transported shall voluntarily escape, or break prison, or return from transportation, before the expiration of the time for which he shall be ordered to be transported, he shall suffer death without benefit of clergy, and shall be tried for such felony in the county where he so escaped, or where he shall be apprehended. By s. 5. no attainder for any offence hereby made felony, shall make or work any corruption of blood, loss of dower, or disherison of heirs. [By s. 4. this act shall not extend to Scotland.] And by the 23 Geo. 2. c. 11. Eng. in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom, the oath was taken, (averring such court or person to have a competent authority to administer the same,) together with the proper averment to falsify the matter wherein the
- s. 11. *Proviso as to ecclesiastical courts.*
- s. 13.
- 2 Geo. 2. c. 25. s. 2. Eng. *Persons guilty of perjury may be transported, or kept to hard labour for 7 years.*
- s. 5. *No corruption of blood.*
- s. 4. *Act not to extend to Scotland.*
- 23 Geo. 2. c. 11. s. 1. Eng. *Form of indictment, &c. for perjury.*

* The 28 Eliz. c. 1. Ir. contains here a special saving for the court of Castle-chamber, and for the lord president and council of Munster, Connaught, and Ulster.

the perjury is assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, other than as aforesaid; and without setting forth the commission or authority of the court or person before whom the perjury was committed. And by s. 2. in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, &c. or any part of any record or proceeding, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or agreed to be committed.

s. 2.

Or subornation of perjury.

And by s. 3. it shall be lawful for [*any justice of assize, or *nisi prius*, or general gaol delivery, or of any of the great sessions of Wales, or of the counties palatine,] (sitting the court, or within 24 hours after,) to direct any person examined as a witness before them, to be prosecuted for perjury, in case there appear a reasonable cause; and to assign the party injured, or other person undertaking such prosecution, counsel, who shall do their duty without fee. And every prosecution so directed, shall be carried on without payment of any tax, or of any fees in court, or to any officer of the court; [†and the clerk of assize, or his associate or prothonotary, or other officer of the court] attending when such prosecution is directed, shall, without fee, give the party injured, or other person undertaking such prosecution, a certificate of the same being directed, with the names of the counsel assigned him; which certificate shall be deemed sufficient proof of such prosecution having been directed as aforesaid: provided that no such direction or certificate shall be given in evidence upon any trial against any person, upon a prosecution so directed. The

s. 3.

Justices of assize, &c. may direct prosecutions for perjury, and assign counsel, &c.

28 Eliz. c. 1. Ir. has followed the 5 Eliz. c. 9. Eng. *supra*, with such deviation as is noted in the margin. And the 3 Geo. 2. c. 4. Ir. contains clauses corresponding to the

28 Eliz. c. 1. Ir.

3 Geo. 2. c. 4.

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2 R

2 Geo. 2. Ir.

* "The court before which any person shall be examined as a witness" in 31 Geo. 3. c. 18. Ir.

† "Proper officer of the court" in 31 Geo. 3. c. 18. Ir.

31 Geo. 3. c. 18. Ir. 2 Geo. 2. c. 25. s. 2 & 5. *supra*. The 31 Geo. 3. c. 18. Ir. has incorporated the clauses, s. 1 & 2. of the 23 Geo. 2. c. 11. Eng. *supra*, and contains also a clause nearly corresponding to the 3d section of the 23 Geo. 2. c. 11. *supra*. But this Irish statute (s. 3.) declares and enacts, that it shall be lawful for the justices of the peace at their quarter-sessions, to hear and determine in all cases of perjury committed within their jurisdiction.

s. 3.
*Perjury triable
at quarter ses-
sions.*

§ 16. XVI. As to the offence of *bribery*: it is enacted by the 3 Edw. 1. c. 26. E. & I. that no sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which he taketh of the king; and he that so doth, shall yield twice as much, and shall be punished at the king's pleasure. And by the 11 Hen. 4. E. & I.* no chancellor, treasurer, keeper of the privy seal, king's counsel, or king's serjeant, or other officer, judge, or minister of the king, receiving fees or wages of the king for their said offices or services, shall take any manner of gift or broeage of any person, for doing the duty of their said offices, upon pain to answer to the king for treble what they shall so take, and to make satisfaction to the party, and to be punished at the king's will, and to be discharged for ever from their said offices, &c.; and any person who shall sue in that behalf, as well for the king as for himself, shall have the 3d part of the sum in which the party shall be convicted. The 28 Edw. 1. st. 3. c. 13. E. & I. 12 Ric. 2. c. 2. E. & I. 4 Hen. 4. c. 5. E. & I. 23 Hen. 6. c. 9. E. & I. 3 Geo. 1. c. 15. s. 10. Eng. and 12 Geo. 1. c. 4. s. 10. Ir. also relate to this offence of bribery: but have been already stated in the chapter concerning subordinate magistrates (*vide* vol. 1. p. 210—219.) And the 5 & 6 Edw. 6. c. 16. Eng. which restrains the corrupt appointments to offices, has been also stated (vol. 1. p. 441.) The statutes which respect bribery at elections for members of parliament, will be found in the first part of this digest (vol. 1. p. 89 to 93).

*Penalty of sher-
iffs, &c. taking
bribes.*

3 Edw. 1. c. 26.
E. & I.

11 Hen. 4.
E. & I.

*Penalty for
great officers
taking bribes.*

For

* This act is not amongst the printed statutes: but I have taken it from the 3d part of Coke's Institutes, p. 146.

XVII. For restraining the offence of *embracery*, the 5 § 17.
 Edw. 3. c. 10. E. & I. enacts, that if any juror in assizes, *Penalty of em-*
 juries or inquests, take of the one party or of the other, *bracery.*
 and be thereof duly attainted, he shall not, thereafter, 5 Edw. 3. c. 10.
 be put in any assizes, &c. and nevertheless he shall be E. & I.
 commanded to prison, and further ransomed at the
 king's will. And the justices before whom such assizes,
 &c. shall pass, shall have power to inquire, &c. accord-
 ing to this statute. And by the 34 Edw. 3. c. 8. E. & I. 34 Edw. 3. c. 8.
 in every plea, whereof the inquest or assize doth pass, E. & I.
 if any of the parties will sue against any of the jurors, *Penalty of a ju-*
 that they have taken of his adversary, or of him, for to *ror taking a re-*
 give their verdict, he shall be heard, and shall have his *ward to give his*
 plaint by bill presently before the justices, before whom *verdict.*
 they did swear, and the juror shall be put to answer
 without delay; and if they plead to the country, the
 inquest shall be taken immediately; and if any man,
 other than the party, will sue for the king against the
 juror, it shall be heard and determined as aforesaid:
 And if the juror be attainted at the suit of other than the
 party, and maketh fine, the party that sueth shall have
 half the fine; and the parties to the plea shall recover
 their damages by the assessment of the inquest: And
 the juror so attainted shall have imprisonment for one
 year, which imprisonment (the king granteth) shall not
 be pardoned for any fine. And if the party will sue by
 writ before other justices, he shall have the suit in form
 aforesaid. And it is further enacted by the 38 Edw. 3. 38 Edw. 3. st. 1.
 st. 1. c. 12. E. & I. that if any juror in assizes sworn, c. 12. E. & I.
 and other inquests to be taken between the king and *Penalties in-*
 party, or party and party, do any thing take, by them or *creased.*
 other of the party, plaintiff or defendant, to give his
 verdict, and thereof be attainted by process contained
 in the 34 Edw. 3. c. 8. *supra*, be it at the suit of the
 party that will sue for himself, or for the king, or any
 other person, every of the said jurors shall pay ten
 times as much as he hath taken; and he that will sue
 shall have the one half, and the king the other half.
 And all embracers that bring or procure such inquests
 in the country, to take gain or profit, shall be punished

in the same manner as the jurors. And if the juror or embracer so attainted have not whereof to make gree as aforesaid, he shall have the imprisonment of one year. And the intent of the king, of the great men, and of the commons, is, that no justice, nor other minister, shall inquire of office upon any of the points of this article, but only at the suit of the party, or other, as aforesaid. The 32 Hen. 8. c. 9. Eng. (*ante* p. 602—4.) extends as well to the crime of embracery, as of maintenance or champerty. The statutes respecting the remedy of attainr for the punishment of the false verdict of jurors, have been already stated, *ante* p. 276 to 280.

32 Hen. 8. c. 9.
Eng.

§ 18. XVIII. With respect to the *negligence of public officers*, various statutes abridged in the progress of this work, which prescribe certain duties for certain officers, impose also divers penalties for the defaults of such officers, or neglect of such duties.

*Negligence of
public officers.*

§ 19. XIX. To the head of *extortion*, is to be referred the 3 Edw. 1. c. 30. E. & I. which recites that many complained of officers, cryers of fee, and the marshals of justices in eyre, taking money wrongfully of such as recover seisin of lands, or of them that obtain their suits, and of fines levied, and of jurors, towns, prisoners, and of others attached upon pleas of the crown; and enacts, that if any officer of fee doth it, his office shall be taken into the king's hand; and if any justices marshals do it, they shall be grievously punished at the king's pleasure; and as well the one as the other, shall pay unto the complainants the treble value of that they have received.

*Penalty of ex-
tortion by cer-
tain officers.*

3 Edw. 1. c. 30.
E. & I.

And the 13 Edw. 1. st. 1. c. 36. E. & I. recites that lords of courts, and others that keep courts, and stewards, intending to grieve their inferiors, procure others to move matters against them, and to put in surety and other pledges, or to purchase writs, and at the suit of such plaintiffs compel them to follow the county, hundred, wapentake, and other like courts, until they have made fine with them at their pleasure; and therefore enacts, that if any be attached upon such false complaints, he shall replevy his distress so taken, and shall cause the matter to be brought before the justices, before whom

13 Edw. 1. st. 1.
c. 36 E. & I.

whom if the sheriff, &c. (after the party distrained hath framed his plaint) will avow the distress to be lawful, and it be replied that such plaints were moved maliciously against the party by the solicitation or procurement of the sheriff, &c. such replication shall be admitted; and if they be convict thereupon, they shall make fine to the king, and besides restore treble damages to the party grieved. By the 1 Ric. 2. c. 5. E. & I. any clerk of the exchequer who shall make any writ or process to levy a debt which has been once paid, and the tally allowed, shall lose his office, and be imprisoned till he hath made gree to the party injured, by the discretion of the treasurer and barons of the exchequer. And the 13 Ric. 2. st. 1. c. 6. E. & I. which limits the number of the serjeants at arms to thirty, enacts, that they do no extortion nor oppression to the people, upon pain to lose their office, and to make fine and ransom at the king's pleasure, and full satisfaction to the party. And by the 3 Edw. 1. c. 31. E. & I. if any person take outrageous toll, contrary to the common custom of the realm, in market towns, if it be the king's town which is let in fee-farm, the king shall seize into his own hand the franchise of the market, and if it be another's town, and the same be done by the lord of the town, the king shall do in like manner; and if it be done by a bailiff without the commandment of his lord, he shall restore to the plaintiff as much more for the outrageous taking, as he had of him, if he had carried away his toll, and shall have 40 days imprisonment. Touching citizens and burgesses to whom the king or his father hath granted murage to enclose their towns, which take murage otherwise than it was granted unto them, and thereof be attainted, they shall lose their grant, and be grievously amerced. Several other statutes which contain clauses prohibiting extortion, have been already stated in their proper places; and others will yet occur in the subsequent pages.

1 Ric. 2. c. 5.
E. & I.

*Punishment of
extortion by
clerks of the ex-
chequer.*

13 Ric. 2. st. 1.
c. 6. E. & I.

*Punishment of
extortion by ser-
jeants at arms.*

3 Edw. 1. c. 31.
E. & I.

*Penalty for tak-
ing excessive
toll.*

CHAP. VIII.

Of Offences against the Public Peace.

§ 1. **A JURISDICTION** is expressly given to justices of the peace in cases of riot, by the 34 Edw. 3. c. 1. E. & I. (*vide* vol. 1. p. 240.) And by the 17 Ric. 2. c. 8. E. & I. if any riot, rout, or other assembly against the peace, be begun, as soon as the sheriffs, or other the king's ministers, shall have knowledge thereof, they, with the power of the county where such case shall happen, shall disturb such malice with all their power, and shall apprehend all such offenders, and put them in prison, until due execution of the law be made of them; and the lords and other liege people of the realm shall attend, with their whole strength and power, the sheriffs and ministers aforesaid. And by the 13 Hen. 4. c. 7. E. & I. if any riot, assembly, or rout of people against law, be made, the justices of peace, or 2 of them, and the sheriff, or under-sheriff, shall come with the power of the county, if need be, and arrest them; and the same justices and sheriff shall have power to record that which they find so done in their presence against law; and by the record such offenders shall be convict in manner as in the statute of forcible entry (15 Ric. 2. c. 2. *post*); and if such offenders be departed before the coming of the justices and sheriff, the same justices, or 2 of them, shall diligently inquire, within a month after, of such riot, &c. and shall determine the same. And by s. 2. if the truth cannot be found, then within a month next following, the justices, or 2 of them, and the sheriff, shall certify before the king and his council, all the deed and circumstances thereof; which certificate shall be of like force as the presentment of 12 men; upon which certificate the offenders shall be put to answer, and they which be found guilty shall be punished after the discretion

Jurisdiction of justices of peace in cases of riot.

34 Edw. 3. c. 1. E. & I.

17 Ric. 2. c. 8. E. & I.

Sheriffs, &c. shall suppress riots.

13 Hen. 4. c. 7. E. & I.

Rioters how tried and punished.

s. 2.

Certificate of riot.

tion

tion of the king and his council. By s. 3. if such offenders traverse the matter certified, the certificate and traverse shall be sent to the king's bench to be tried and determined; and if the offenders do not come before the king and his council at the first command, there shall be made another directed to the sheriff, to take the offenders if they may be found, and bring them at a certain day before the king and his council, or in the king's bench; and if they cannot be found, the sheriff shall make proclamation in full county next ensuing the delivery of the said second command, that they come before the king and his council, or in the king's bench, or in the chancery in time of vacation, within 3 weeks then following; and in case the offenders come not, and the proclamation made and returned, they shall be convict of the riot, &c. And by s. 4. the justices of peace, dwelling nighest where such riot, &c. shall be made, together with the sheriff, or under-sheriff of the county, and also the justices of assizes for the time that they shall be in their sessions, shall do execution of the same statute, every one upon pain of £100. And by the 2 Hen. 5. st. 1. c. 8. E. & I. if default be found in the said justices of peace, or justices of assize, and the sheriff, or under-sheriff of the county where any riot, assembly, or rout, shall be made, touching the execution of the 13 Hen. 4. c. 7. *supra*; at the instance of the party grieved, the king's commission shall go out under his great seal, to inquire as well of the truth of the case, and of the original matter, as of the defaults of the said justices, &c. to be directed to indifferent persons, at the nomination of the chancellor; and the commissioners shall return into chancery the inquests before them taken; and the coroners shall make the panel for the time that the sheriff, that is supposed in default, shall continue in office; which coroners shall return no persons but such as have lands to the value of £10. by the year; and the coroners shall return upon the persons impanelled at the first day issues to 20s. and at the second day 40s. and at the third day 100s. and every day after, the double at least; and if default be found in the coroners,

s. 3.

Traverse of riot where triable.

s. 4.

*Penalty for default of justices.*2 Hen. 5. st. 1.
c. 8. E. & I.*Commissions shall be awarded to inquire of riots, and defaults of justices, &c.**Inquests how returned.*

Chancellor's writ.

s. 2.

Riots repressed at the king's charge.

Punishment of rioters.

Penalty for not aiding in the repression of riots.

19 Hen. 7. c. 13. Eng.

Number and estate of jurors returned to inquire of riots.

ners, touching the return of such persons impanelled, or touching the return of issues, every of them shall pay to the king £40.; and if the sheriff be discharged of his office, at the time such commission shall be awarded, the new sheriff shall make the panel, and shall incur the like pain of £40. for like default. And the chancellor, as soon as he may have knowledge of such riot, &c. shall cause to be sent the king's writ to the justices of peace, and to the sheriff, that they put the statute in execution, upon the pain contained in the same; and though such writ come not to the justices or sheriff, they shall not be excused if they make not execution of the statute. Provided (s. 2.) that the justices and other officers shall do their offices at the king's costs, by payment to be made by the sheriff by indentures betwixt the sheriff and the justices, and other officers. And rioters attainted of great and heinous riots, shall have one year's imprisonment, and rioters attainted of petty riots, shall have imprisonment as shall seem best to the king or his council; and the fines of such rioters shall be by the said justices increased and put in greater sums than they were wont to be; and the king's liege people in the county shall be assistant to the justices, commissioners, sheriff, or under-sheriff, when they shall be reasonably warned to ride with them to resist such riots, &c. upon pain of imprisonment, and to make fine and ransom to the king; and bailiffs of franchises shall cause to be impanelled sufficient people, upon pain to lose to the king £40.; and like ordinances and pains shall hold place in cities, and other places which have justices of peace. And the

19 Hen. 7. c. 13. Eng. further provides, that if any riot, rout, or unlawful assembly, be committed, the sheriff, having a precept directed to him, shall return 24 persons dwelling within the shire, whereof every of them shall have lands within the shire to the yearly value of 20s. of freehold, or 26s. 8d. of copyhold, or of both, above all charges, to inquire of such riot, &c.; and he shall return upon every person impanelled, in issues, at the first day 20s. and at the second day 40s. and if default be found in the sheriff or under-sheriff for returning other persons, or other issues, he shall forfeit to the king £20.

And

And if the riot, &c. be not found by the jury, by reason of any maintenance or embracery, the justices and the sheriff shall in the certificate certify the names of the maintainers and embracers, with their misdemeanors, upon pain of every of the said justices, and sheriff or under-sheriff, to forfeit £20. if they have no reasonable excuse: which certificate shall be of the like force as if the matter were found by verdict of 12 men: and every person proved to be a maintainer or embracer in the same, shall forfeit to the king £20. and be committed to ward by the discretion of the justices. There is no statute in Ireland similar to the 19 Hen. 7. c. 13. Eng. But the provision of the following Irish statute may be here stated. By the 3 Geo. 3. c. 19. Ir. on notice or knowledge of any unlawful, riotous, and tumultuous assembly, every justice of peace, sheriff, under-sheriff, mayor, bailiff, and other head officer, within their jurisdictions, taking with them the necessary assistance (and they are hereby empowered to command all his majesty's subjects of age and ability to be assisting to them) shall resort to the place where such unlawful, &c. assembly shall be, and use their utmost endeavours to disperse the same, and to apprehend the offenders; and if the persons so unlawfully, &c. assembled shall be killed, maimed, or hurt, in the dispersing, &c. or endeavouring to disperse, &c. them, every such justice of the peace, &c. and all persons aiding or assisting them, shall be indemnified as well against the king, as against every other person for the killing, &c. any person so unlawfully, &c. assembled; and no prosecution shall be carried on against such justice, &c. on account of such killing, &c. unless the same shall be commenced within 12 months next following. And it is a provision of the 26 Geo. 3. c. 24. Ir. that the several laws in this kingdom for raising the *posse comitatus*, shall be extended as well to justices of the peace, as sheriffs, in all cases of dangerous riots, and outrageous violations of the public peace, by multitudes of people, either by night or day.

The former statutes for the suppression of riots having been found inadequate, the 1 Geo. 1. st. 2. c. 5. Eng. further

Embracers, &c. of the jury to be certified, and punished.

3 Geo. 3. c. 19. Ir.

Magistrates to disperse all unlawful and riotous assemblies, and indemnified, if any killed, &c. in dispersing, &c.

No prosecution against magistrate unless commenced within 12 months.

26 Geo. 3. c. 24. s. 74. Ir.

Laws for raising the posse comitatus, extended to justices of peace.

12 persons or more unlawfully assembled, &c.

not dispersing
after proclama-
tion, guilty of a
capital felony.

1 Geo. 1. st. 2.
c. 5. s. 1. Eng.

*" rising" here
added in the
27 Geo. 3. c. 15.
Ir.

s. 2.

How the procla-
mation shall be
made.

s. 5.

Opposing, &c.
the making such
proclamation, a
capital felony:

§ " Or" in 27
Geo. 3. c. 15.
Ir.

Or not dispers-
ing after let
thereof.

s. 3.

further enacts, that if any persons, to the number of 12, being unlawfully, riotously, and tumultuously assembled, to the disturbance of the public peace, and being required by any justice of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor or other head officer, or justice of peace of any city or town corporate, where such *assembly shall be, by proclamation in the king's name, to disperse and depart, shall unlawfully, &c. continue together by the space of one hour after such proclamation, such continuing together, to the number aforesaid, shall be felony without benefit of clergy. And by s. 2. the form of the proclamation shall be in manner following: *viz.* the justice of peace, or other person authorized by this act, shall amongst the rioters, or as near to them as he can safely come, command silence while proclamation is making, and after that, shall, openly and with a loud voice, make proclamation in these words, or the like: " Our sovereign lord the king chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably depart to their habitations, or to their lawful business, upon the pains contained in the act made in the [†first year of king George, for preventing tumults and riotous assemblies.] God save the king:" And every such justice, &c. within their jurisdictions, on notice of any such unlawful assembly, shall resort to the place, and make proclamation as aforesaid. And by s. 5. if any person shall, [‡with force and arms,] wilfully [§and] knowingly oppose, obstruct, hinder or hurt, any person that shall so begin to proclaim, or go to proclaim, whereby such proclamation shall not be made, such opposing, &c. shall be felony without benefit of clergy: and if such persons so assembled shall not disperse within one hour after such let or hinderance, having knowledge of such let, &c. they shall suffer as felons without benefit of clergy. By s. 3. if such persons so unlawfully, &c. assembled, or 12 or more of them, shall,

† " Twenty seventh year of king George the third, to prevent tumultuous risings and assemblies," in 27 Geo. 3. c. 15. Ir.

‡ " By threats, messages, or with force," in 27 Geo. 3. c. 15. Ir.

shall, after proclamation made, *not disperse themselves within one hour, it shall be lawful for every justice, &c. and for every peace officer, within such county, &c. and for such other persons as shall be commanded to be assisting to such justice of peace, &c. (who are hereby empowered to command all his majesty's subjects of age and ability to be assisting) to seize such persons, and carry them before a justice of peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against according to law; and if such persons so assembled shall be killed, maimed, or hurt, in the dispersing, seizing, or apprehending them, by reason of their resisting the persons so dispersing, &c. them, then such justice of peace, &c. or peace officer, or person being aiding and assisting to them, shall be indemnified for such killing, &c. By s. 4. if any persons so unlawfully, &c. assembled, shall unlawfully and with force demolish or pull down any church or chapel,* or any building for religious worship, [certified and registered according to the 1 W. & M. st. 1. c. 18. Eng.] or any dwelling-house, barn, stable, or other out-house, it shall be felony without benefit of clergy. And by s. 6. if any church, &c. shall be demolished, wholly or in part, by any persons so unlawfully &c. assembled, then in case such church, &c. shall be out of any city or town that is a county of itself, or is not within any hundred, the inhabitants of the hundred in which such damage shall be done, shall yield damages to the persons damnified by such demolishing, which may be recovered by action in any court of record at Westminster, against any 2 or more of the inhabitants; (such action for damages to any church or chapel to be brought in the name of the rector, vicar, or curate, in trust for rebuilding and repairing such church, &c.;) and judgment being given for the plaintiff, the damages recovered, shall, at the request of the plaintiff, his executors or administrators, be raised on the inhabitants, and paid to the plaintiff, in such manner as provided by the 27 Eliz. c. 13. Eng. for reimbursing the person on whom

Such rioters are to be seized and carried before a justice.

If any killed, &c. the officers, &c. indemnified.

s. 4.

Pulling down any church, &c. or obstructing the clergyman, &c. a capital felony.

s. 6.

Damages how made good, if any church, &c. be demolished.

* "Or after such let or hinderance" here added in 27 Geo. 3. c. 15. Ir.

whom any money recovered against any hundred by any party robbed, shall be levied: And if such church, &c. shall be in any city or town that is either a county of itself, or not within any hundred, then such damages shall be recovered by action to be brought in manner aforesaid against 2 or more inhabitants of such city, &c. and judgment being given for the plaintiff, the damages shall, at the request of such plaintiff, his executors or administrators, made to the justices of peace of such city, &c. at any quarter-sessions for said city, &c. be levied on the inhabitants of such city, &c. and paid to such plaintiff as provided by the 27 Eliz. c. 13. By s. 7. this act shall be read at every quarter-sessions, and at every leet. By s. 8. no person shall be prosecuted for any offence contrary to this act, unless prosecution be commenced within 12 months after the offence committed. By s. 9. sheriffs, stewards, bailiffs of regalities, magistrates of royal boroughs, and all inferior judges and magistrates, and all high and petty constables, and other peace officers in Scotland, shall have the same powers for putting this act in execution there, as the justices and other magistrates have for the other parts of this kingdom; and all persons convicted of the said offences, in Scotland, shall incur the pain of death, and confiscation of moveables; and all prosecutions for the damages of any church, &c. that shall be demolished, in whole or in part, in Scotland, by any persons unlawfully, &c. assembled, shall be recovered by summar action, at the instance of the party grieved, his heirs or executors, against the county, stewartry, city or borough, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the headborough of such county, &c. and that in general, without mentioning their names and designations. By s. 10. this act shall extend to all places for religious worship in Scotland, which are tolerated by law. The 27 Geo. 3. c. 15. Ir. contains clauses similar to sections 1. 2. 3 & 5. of the 1 Geo. 1. st. 2. c. 5. *ante* p. 617—8. and in analogy to s. 4. of this English statute enacts,

s. 7.

This act how proclaimed.

s. 8.

Limitation for prosecutions.

s. 9 & 10.

*Act how executed in Scotland.*27 Geo. 3. c. 15.
s. 1 to 4. Ir.

s. 5.

enacts, that if any persons unlawfully, riotously, and tumultuously assembled, shall, unlawfully and with force, demolish, &c. any church or chapel for the celebration of divine service, according to the usage of the church of Ireland, or any building used for religious worship; or if any person or persons shall wilfully burn or set fire to, or shall maliciously fasten up any church, &c. or by threats or force prevent or obstruct any clergyman from officiating or celebrating divine service therein, or shall maim or hurt any clergyman officiating, or about to perform divine service therein; such offenders shall be guilty of felony without benefit of clergy. And this Irish statute further enacts (s. 11.) that every person who shall voluntarily enter into any unlawful combination or confederacy to defraud any clergyman of the church of Ireland, or lay impropriator, of any tithes or dues to which he is legally entitled, or of any part thereof, or to obstruct them in the collection thereof, or shall by force, threats, or other unlawful means, prevent any such clergyman, &c. or any person employed by him, from receiving, valuing, setting or selling any tithes to which he is entitled, shall be guilty of a misdemeanor, and be punished by fine or imprisonment, or suffer such corporal punishment as the court shall direct. And by s. 8. if any person shall dig, erect, or provide, or cause to be dug, &c. any grave, gallows, or gibbet, or any instrument for inflicting bodily pain or punishment, in order to induce or compel any person to enter into, support, maintain, or assist in any unlawful combination or agreement, or in order to deter or prevent any person from giving evidence in any suit or prosecution, civil or criminal, or to prevent the collection of any lawful rates or taxes, or shall make use of any manner of force, or inflict or threaten to inflict any bodily pain or punishment, or destroy or threaten to destroy the property of any person, in order to induce or compel any person to enter into, support or maintain, or assist in any unlawful combination or conspiracy whatsoever, or to prevent the collection of any such rates or taxes, or to deter or prevent any person from giving evidence in any suit or prosecution,

Pulling down any religious house, or obstructing the clergyman, &c. a capital felony.

s. 11.

Entering into unlawful combinations to defraud the clergy of their dues, &c. how punished.

s. 8.

Digging grave, or erecting gallows, &c. to compel persons to enter into combinations to prevent the giving evidence, or collecting taxes, felony, death, and dissection.

prosecution, civil or criminal, or on account of any person's having declined or refused to enter into any unlawful combination or agreement, or on account of any person's having given evidence in any action or prosecution, civil or criminal, such person, and all persons aiding, abetting, and assisting therein, shall be guilty of felony, and suffer death, without benefit of clergy; and the body of every person that shall so suffer, shall be delivered by the sheriff to the surgeon of the infirmary of the county, to be by him publicly dissected.

s. 9.

Publishing notices to excite unlawful meetings, a capital felony.

By s. 9. if any person shall print, write, post, publish, or knowingly circulate or deliver, or cause to be printed, &c. any notice, letter, or message, exciting or tending to excite any riot, tumultuous meeting, or unlawful combination or confederacy, such person shall be guilty

s. 10.

Seizing arms, or exacting money, &c. or supplying arms, &c. to rioters, &c. a capital felony.

of felony without benefit of clergy. And by s. 10. every person not thereunto lawfully authorized, who shall forcibly seize any arms or ammunition belonging to any person, or shall forcibly, or by menace or intimidation, exact or levy from any person any contribution in money or goods, or shall by insinuation, menaces, threats or violence, cause any person unwillingly to deliver any arms or ammunition, or to send such arms, ammunition, money or goods, to any person or place, and every person who shall knowingly and voluntarily supply horses, arms, or ammunition to any person, for the purpose of assisting any person in the execution of any of the offences in this act mentioned, shall be guilty of felony without benefit of clergy. But by s. 12. no person shall be

s. 12.

Limitation for prosecutions.

29 Geo. 2. c. 12.
s. 1. Ir.

Bonds, &c. between tenants to hinder landlords or agents from letting land, or distraining for rent, or between parishioners to hinder rectors, &c. from drawing, setting or selling tithes void.

prosecuted by virtue of this act, unless such prosecution be commenced within one year after the offence be committed. The 29 Geo. 2. c. 12. Ir. may be here stated, which enacts, that all bonds, contracts, covenants, or agreements, between any tenants, with intent to hinder or obstruct landlords, or their agents or bailiffs, in setting any lands, &c. to the best advantage, or in distraining for rent, or arrears of rent, or between any parishioners for the purpose of hindering or obstructing any rector, vicar, lay-impropriator, or tithe farmer, in drawing any tithes, or in setting or selling any tithes to the best advantage,

vantage, shall be illegal and void to all intents. And
 by s. 2. if any person shall make or enter into any
 such bond, &c. or shall knowingly write or send, or
 cause to be written or sent, any letter without a name
 subscribed thereto, or signed with a fictitious name, or
 knowingly shall publish, or cause to be published, or set
 up, or cause to be set up, in any place, any written or
 printed advertisement or paper, thereby threatening any
 violence, injury, or damage to the person, or to the es-
 tate or property of any landlord, or agent, or receiver, or
 of any rector, vicar, lay-impropriator, or tithe-farmer,
 or of any tenant or parishioner, with an intention to ter-
 rify such landlord from setting any lands, &c. to the best
 advantage, or to terrify any landlord, agent, or receiver,
 from distraining for rent, or arrears of rent, or to
 terrify any person from assisting such landlord or re-
 ceiver in distraining for such rent, &c. or with an intention
 to terrify any rector, &c. from taking tithe in kind, or
 from setting or selling any tithe to the best advantage,
 or to terrify any person from assisting such rector, &c.
 in drawing, setting, or selling any tithe, &c. or with an
 intention to procure or encourage any unlawful combina-
 tion of tenants to hinder or obstruct their landlord, or
 the agent of such landlord, in the setting any lands, &c.
 to the best advantage, or in distraining for any rent, &c.
 or with an intention to procure or encourage any unlaw-
 ful combination of parishioners to hinder or obstruct any
 rector, &c. in drawing any tithes, or in setting or selling
 any tithes to the best advantage; or if any person shall
 wilfully or maliciously destroy, or make unfit for use, any
 carriage, cart, truckle, or car, or the harness, traces,
 or other tackle belonging thereto, intended to be em-
 ployed in drawing or carrying any distress or tithes;
 every such offender, being convicted upon the oath of one
 witness, before 2 justices of peace for the county, &c.
 upon any prosecution commenced within 3 calendar
 months after the offence, shall forfeit £5. one half to the
 informer, and the other to the poor of the parish; which
 £5. the justices shall levy by their warrant for distress and
 sale of the offender's goods and chattels; and for want of
 sufficient distress, such offender shall, by order of such
 justices,

s. 2.

*Penalty for en-
 tering into such
 bonds, &c. or
 writing or send-
 ing letters, or
 publishing ad-
 vertisements,
 threatening
 landlord, &c.
 or encouraging
 such combina-
 tions, or destroy-
 ing carriages,
 &c. designed to
 be employed in
 drawing distress
 or tithes.*

justices, be committed to the house of correction to be kept to hard labour, or to the common gaol of such county, &c. for any time not exceeding 3 calendar months.

Persons disguised and in arms, killing deer, &c. in forests, &c. or stealing fish out of rivers or ponds, a capital felony.

9 Geo. 1. c. 22. s. 1. Eng.

Other offences in respect to game and fish.

Malicious mischief to cattle, fish, and trees.

Setting fire to houses, &c.

Shooting at persons.

Sending threatening letters.

By the 9 Geo. 1. c. 22. Eng.* if any person being armed with swords, fire-arms, or other offensive weapons, and having his face blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds enclosed with any wall, pale, or other fence, wherein any deer shall be usually kept, or in any warren or place where hares or conies shall be usually kept, or in any high road, open heath, common, or down; or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are usually kept; or shall unlawfully steal or take away any fish out of any river or pond; [† for if any person shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in his majesty's forests or chases, which shall be enclosed with pales, rails, or other fences, or in any park, paddock, or grounds enclosed, where deer shall have been usually kept; or shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; or shall unlawfully and maliciously kill, maim, or wound any cattle; or cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit; or shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood; or shall wilfully and maliciously shoot at any person in any dwelling-house, or other place; or shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable

* This statute is commonly called the Black Act, several persons having then associated themselves (as recited hereby) under the name of *Blacks*.

† The circumstances of being "armed or disguised," do not seem to be necessary to constitute the following offences enumerated; but I have thought it right to give the whole of this clause in this place.

valuable thing; or shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the offences before-mentioned; or if any person shall by gift or promise of money, or other reward, procure any of his majesty's subjects to join him in any such unlawful act;] every such offender shall be guilty of felony without benefit of clergy. By s. 4. if any person shall be charged with any of the offences aforesaid, before any 2 justices of peace of the county where such offence shall be committed, by information of one person upon oath by him to be subscribed; such justices shall forthwith certify under their hands and seals, and return such information to one of the principal secretaries of state, who is to lay the same before the king in council; whereupon it shall be lawful for the king to make his order in his privy council, requiring such offender to surrender himself, within 40 days, to any of his majesty's justices of the king's bench, or any one of his justices of peace, to the end that he may be forthcoming to answer the offence; which order shall be printed and published in the next London Gazette, and shall be forthwith transmitted to the sheriff of the county where the offence shall be committed, and shall, within 6 days after the receipt thereof, be proclaimed by him, or his officers, between the hours of 10 in the morning, and 2 in the afternoon, in the market places, upon the respective market days of 2 market towns in such county, near the place where such offence shall have been committed, and a true copy of such order shall be affixed upon some public place in such market-towns; and in case such offender shall not surrender himself pursuant to such order of the king in council, he shall, from the day appointed for his surrender, be deemed convicted and attainted of felony, and shall suffer death (as a person convicted and attainted by verdict and judgment) without benefit of clergy; and it shall be lawful for the court of king's bench, or the justices of *oyer and terminer*, or general gaol delivery, where the offence is sworn in such information to have been committed, upon producing to them such order in council, under seal of the said

Or rescuing such offenders.

s. 4.

Justices to return informations to secretary of state.

Proclamation thereupon.

Offenders not surrendering to be deemed convicted.

VOL. II. 2 s council,

s. 5.
*And their abet-
 tors guilty of a
 capital felony.*

s. 6.
*Offenders ap-
 prehended with-
 in the time limi-
 ted by order of
 council, tried ac-
 cording to law.*

s. 7.
*Hundred charge-
 able for da-
 mage sustained
 by maiming cat-
 tle, &c.*

council, to award execution against such offender, as if he had been convicted and attainted in the said court of king's bench, &c. And by s. 5. every person who shall, after the time appointed for the surrender of any person so charged as aforesaid shall be expired, conceal, aid, abet or succour such person, knowing him to have been so charged, and to have been required to surrender himself, being lawfully convicted thereof, shall be guilty of felony without benefit of clergy. Provided (s. 6.) that nothing herein shall prevent any judge, justice of peace, magistrate, or officer of justice, from taking and securing such offender against whom information shall be given, and for requiring whose surrender such order in council shall be made, by the ordinary course of law; and in case such offender against whom such information, and for requiring whose surrender such order in council shall be made, shall be taken and secured before the time limited by such order in council shall be expired, then no further proceeding shall be had upon such order in council, but he shall be brought to trial by due course of law. [*By s. 7. the inhabitants of every hundred within England, shall make full satisfaction and amends to all persons, their executors, &c. for the damages they shall have sustained by the killing or maiming of any cattle, cutting down or destroying any trees, or setting fire to any house, barn, or out-house, hovel, cock, mow or stack of corn, straw, hay, or wood, which shall be committed by any offender against this act; and every person who shall sustain damages by any of the offences last mentioned, shall be enabled to sue for and recover his damages (not exceeding £200.) against the inhabitants of said hundred; and if such person shall recover in such action, and sue execution against any of such inhabitants, all other inhabitants of the hundred, who by this act shall be liable to all or any part of the damage, shall be ratably taxed towards an equal contribution for the relief of such inhabitant against whom such execution shall be levied; which tax shall be levied as prescribed by

* This clause is explained by the 29 Geo. 2. c. 36. s. 9 Eng. post.

by the 27 Eliz. c. 13. Eng. intituled "An act for the following hue and cry." Provided (s. 8.) that no person shall recover any damages by this act, unless he, by himself or his servants, within 2 days after such damage done by any such offender, shall give notice of such offence unto some of the inhabitants of some town, village, or hamlet, near the place where such fact shall be committed, and shall, within 4 days after such notice, give in his examination upon oath, or the examination upon oath of his servant that had the care of his house, out-house, corn, hay, straw, or wood, before a justice of peace of the county, &c. where such fact shall be committed, inhabiting within the hundred where the fact shall be committed, or near unto the same, whether he do know the person or persons that committed such fact, or any of them; and if upon such examination it be confessed that he do know the persons that committed said fact, or any of them, he shall be bound by recognizance to prosecute such offender by indictment or otherwise. And by s. 9. where any offence shall be committed against this act, and any of the offenders shall be apprehended and convicted, within 6 months after such offence, no hundred, or the inhabitants thereof, shall be liable to make any satisfaction to the party injured. And provided also (s. 10.) that no person who shall sustain any damage by reason of any offence committed contrary to this act, shall be enabled to bring any action against any inhabitants of any hundred, except such party shall commence his action within one year after the offence. By s. 12. if any person shall apprehend or cause to be convicted any of the offenders above-mentioned, and shall be killed or wounded, so as to lose an eye or the use of any limb, in apprehending or securing, or endeavouring to apprehend, &c. any of the offenders above-mentioned, upon proof thereof at the quarter-sessions of the peace for the county, &c. where the offence was committed, or the party killed or wounded, by the person so apprehending, and causing the offender to be convicted, or the person so wounded, or the executors, &c. of the party killed, the justices

s. 8.

Persons injured when to give notice, and swear examinations.

Recognizance to prosecute offenders, if known.

s. 9.

Hundred not liable, if the offender is convicted in 6 months.

s. 10.

Limitation for action against hundred.

s. 12.

Reward where persons killed or wounded in apprehending offenders.

of said sessions shall give a certificate thereof to the person so wounded, or to the executors, &c. of the person so killed, by which he or they shall be entitled to receive of the sheriff of the county £50. (to be allowed the sheriff in passing his accounts) which sum the sheriff shall pay within 30 days from the day on which the said certificate shall be produced to him, under the penalty of forfeiting £10. to the person, &c. to whom such certificate is given, for which said sum of £10. as well as £50. such person may bring an action upon the case against such sheriff, as for money had and received to his use. By s. 14. every offence against this act shall and may be tried and determined in any county in England, as if the fact had been therein committed; provided that no attainder for any of the offences made felony by this act, shall work any corruption of blood, loss of dower, or forfeiture of lands, &c. And by s. 15. this act shall be openly read at every quarter sessions, and at every leet or law day. The 27 Geo. 2. c. 15. Eng. explains and amends the 9 Geo. 1. c. 22. s. 1. *supra*, and enacts, that if any person shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name or names, or letter or letters, threatening to kill or murder any of his majesty's subjects, or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw, though no money, or venison, or other valuable thing shall be demanded by such letter; or shall forcibly rescue any person being lawfully in custody of any officer or other person for said offence, such offender shall be guilty of felony without benefit of clergy. And the 29 Geo. 2. c. 36. s. 9. Eng. for explaining the 9 Geo. 1. c. 22. s. 7. *supra*, enacts, that it shall be lawful for any person, &c. to take remedy for the damages by cutting down or destroying any trees committed by any offender against said act, either against the parish, town, hamlet, vill, or place, where any of the said offences shall be committed, according to the powers given by the 1 Geo. 1. st. 2. c. 48. Eng. and 6 Geo. 1. c. 16. Eng. or on the hundred, as to such person, &c. shall seem most meet.

s. 14.

Such offences may be tried in any county.

Attainder not to work corruption of blood, &c.

s. 15.

This act how proclaimed.

27 Geo. 2. c. 15. Eng.

Sending threatening letters, or rescuing such offenders, though no money, &c. demanded, a capital felony.

29 Geo. 2. c. 36. s. 9. Eng.

Remedy for damages in maliciously cutting trees may be on the 9 Geo. 1.

c. 22. 1 Geo. 1. st. 2. c. 48. or 6 Geo. 1. c. 16.

The

The 15 & 16 Geo. 3. c. 21. Ir.* with some analogy to *Persons armed, disguised, &c. assembling by day or night, guilty of a misdemeanor.* the 9 Geo. 1. c. 22. Eng. *supra*, enacts (s. 2.) that if any person being armed with any fire-arms, firelock, pistol, or any offensive weapon, or having his face or body disguised in any manner, or wearing any particular badge, dress, or uniform not usually worn by him on his lawful occasions, or assuming any particular name or denomination not usually assumed by his majesty's subjects upon their lawful occasions, shall rise, assemble, or appear, by day or by night, to the terror of his majesty's subjects, such offender shall be guilty of a high misdemeanor; and the court before whom such person shall be tried, shall have power to punish such offender *How punished.* by fine and imprisonment, and to award pillory, whipping, or other corporal punishment, with security for the future good behaviour of the person so convicted, as to the court shall seem meet. And by s. 3. if any person *s. 3.* rising or assembling in manner herein-before mentioned, or in any other manner save as herein-after is declared, *If persons so assembled shoot at, or maim, &c. any person, or send threatening letters, or procure others to join them, &c. guilty of a capital felony.* shall, either by day or by night, wilfully or maliciously shoot at, maim, or disfigure any person in any dwelling-house or other place; or shall knowingly send any letter, with or without any fictitious name thereto subscribed, demanding any money, fire-arms, ammunition or other thing, or threatening to injure the person or property of any subject; or if any person shall by gift, promise, or threats, procure any subject to join in any of the aforesaid offences, or shall unlawfully compel, or by force, threats, or menaces, attempt to compel any subject to quit his habitation, farm, possession, place of abode, or lawful employment, such offender shall be guilty of felony without benefit of clergy. By s. 4. if *s. 4.* any person shall after sun-set and before sun-rise, or before the hour of 6 in the forenoon, though the sun should be arisen, maliciously assault or injure the habitation, property, goods or chattels of any other person; *After sunset and before 6 in forenoon, to injure habitation or property, or by force open any door, or forcibly take away horse, &c. a capital felony.* or shall forcibly and maliciously break into his house, barn, or out-house; or shall maliciously cause any door

* This act was framed to prevent the tumultuous risings of persons calling themselves Whiteboys; and is therefore called the Whiteboy act.

to be open by threats or menaces; or shall forcibly take or carry away any horse, gelding, mare, or mule, or any gun, sword, or other offensive weapon, or any money or goods, without the consent of the owner, or shall cause the same, or any of them, to be delivered to them by threats or menaces; every such offender shall be guilty of felony without benefit of clergy. And by

s. 5.

Such offences between sunrise and sunset how punished.

s. 5. if any person shall after the hour of 6 in the forenoon, the sun being risen, and before sun-set, commit any of the offences last herein-before mentioned, such offender shall be punished by fine and imprisonment, pillory, whipping, or such other corporal punishment as the court shall think fit. By s. 6. it shall be lawful for every

s. 6.

Powers of magistrates and peace officers in respect to such offenders.

justice of peace, sheriff, under-sheriff, mayor, bailiff, or other peace officer, within the limits of their jurisdictions, taking with them the necessary assistance (and they are hereby empowered to command all his majesty's subjects of age and ability to be assisting therein) to apprehend, disperse, resist, and oppose all persons concerned in any of the unlawful acts before-mentioned; and if any person shall happen to be killed, maimed, or hurt, in the apprehending, dispersing, resisting, or opposing any such offenders, such justice of peace, &c. and all persons aiding and assisting them, shall be freed and indemnified as well against the king, as against all other persons, for the killing, &c. any such persons.

s. 7.

To abet or conceal such offenders, a capital felony.

And by s. 7. every person who shall assist, abet, or succour any person to commit any of the offences aforesaid, or shall wilfully and knowingly conceal any person who hath committed any of the offences aforesaid, (for which sentence of death as in cases of felony may be awarded,) every person so aiding, &c. shall be guilty of felony without benefit of clergy. By s. 23. every person who

s. 23.

Persons exciting unlawful meetings, by signal, &c. how punished.

by sound of drum, horn, music, fire, shouting, or other signal, shall, knowingly, excite, encourage or promote such unlawful meetings as aforesaid, shall be guilty of a high misdemeanor; and all accessaries before and after any of the offences aforesaid, may be tried and convicted although the principal be not taken. By s. 8. every person, his executors, &c. who shall sustain any

s. 8.

injury,

injury, loss, or damage by any of the offences herein-
 before mentioned, may sue for and recover satisfaction Satisfaction for every such injury how obtained.
 for such injury, at the next assizes for the county where
 such offence was committed, by exhibiting to the judge
 or judges of assize his petition praying such satisfaction,
 and setting forth particularly the injury done to his per-
 son, habitation, property, goods or chattels, and the
 particular value thereof, by what number of persons he
 or they believe such injury was done, and of what reli-
 gion he or they believe such offender or offenders was
 or were, with the names and descriptions of such offen-
 ders as he or they shall know, and such particular de-
 scriptions of such others of them as he or they can give;
 and the matter shall thereupon be examined by such
 judge or judges in open court, in the presence of the
 grand jury, on the oath of the party assaulted or injured,
 and such other evidence as can be produced touching
 the said offences; and if such judge of assize shall be of
 opinion, that the person preferring the petition hath
 proved the matters aforesaid, and the value of the inju-
 ry, so as to entitle him to amends, the grand jury shall,
 pursuant to the direction of the judge, present such sum
 as the person so injured ought in their opinion to re-
 ceive; to be raised on the county, barony, town or
 towns, parish or parishes, in or near which such offence
 shall have been committed, and in such proportions as
 they shall think fit; which sum shall be applotted,
 levied, and raised, as other public money presented at
 the assizes, shall be applotted, &c. pursuant to the laws
 now in force. Provided (s. 9.) that if any person shall
 find himself aggrieved by any presentment to be made
 in pursuance of this act, such person (in case the sum
 presented exceed £5.) may at said assizes traverse the
 same; which traverse shall be tried at the same,
 or the next assizes, as the judge shall think fit;
 and if on such traverse the issue shall be found for the
 traverser, such presentment shall be discharged, other-
 wise the same shall be final. But by s. 10. every person
 applying for such presentment shall, by himself, or by
 some person on his behalf, within 48 hours after
 such

s. 9.

*Traverse of such
presentments for
compensation.*

s. 10.

*What notices
required to lay
a ground to peti-
tion for compen-
sation.*

*Examination
upon oath also
required.*

*Recognizance
to prosecute of-
fenders if
known.*

s. 11.

*Presentments
for damages
when to be made.*

s. 12.

*Presentments
not removed by
certiorari; nor
quashed for want
of form.*

s. 13.

*Duty of clerk of
the crown.*

such injury, or within a reasonable time after he shall be at liberty, give notice thereof unto some of the inhabitants of some town or village near the place where such fact shall be committed, and shall, within 6 days after such fact committed, give notice to the high constable of the barony, and to the church-wardens of the parish, where such fact shall be alleged to be committed, (if such high constable and church-wardens shall reside within such barony and parish) who shall, forthwith, publish the same in the several market towns of such barony and parish; and also, within 6 days after such notice, the person so injured shall give his examination upon oath (or examination upon oath shall be given by his servant or family who are in his house, or had the care of his habitation, &c.) before some justice of peace of the county inhabiting within the barony where such fact shall be committed, or near to the same, specifying whether he knows the persons who committed such fact, or any of them; and if upon such examination it shall be confessed that he knows any of such persons, he shall be bound by recognizance to prosecute such offender. By s. 11. every presentment by virtue of this act shall be made at the next assizes after the fact committed, and shall be read in open court; and shall not be made at any other assizes, unless such fact shall be committed so near the time of holding such assizes, that due notice cannot be given before the first day of such assizes; in which time it shall be lawful to prefer the petition, and obtain such presentment, at the next assizes after such due notice shall be given. By s. 12. no such presentment shall be removed by *certiorari*, or the prosecution otherwise delayed than by such traverse as aforesaid, and that for such time only as shall be necessary for the trial of such traverse; nor shall any such presentment be quashed for any defect in form. And by s. 13. the clerk of the crown for the county where such presentment shall be made, shall make and deliver to any person desiring the same true copies signed by him of all such presentments, and of warrants for levying of any money grounded thereon; for each of which shall be paid to the

the clerk of the crown, 6*d.* only. And for preventing the mischiefs herein-before mentioned, this act provides (s. 15.) that it shall be lawful for any justice of the peace, and for all mayors, sheriffs, and chief magistrates of cities and towns corporate, within their jurisdictions, to search for, seize, and carry away, or cause to be searched for, &c. all arms and ammunition belonging to or in the custody or possession of any papist or reputed papist not duly licensed to keep the same, or in the possession of any person in trust for them, and to enter into any dwelling-house, or other place belonging to such papist, &c. or any other person, where they shall have reasonable cause to suspect any such arms, &c. shall be concealed; and such arms, &c. shall be preserved for the use of the king, to be disposed of as he shall think fit; unless it shall appear that the same were forcibly taken away from some of his majesty's subjects, in manner herein-before mentioned (s. 4.) in which case such arms shall be delivered to such person; and in case such justice, &c. after such search, shall have cause to suspect that any arms, &c. remain concealed, he shall cause the person whom he shall suspect to have concealed them, to be brought before him, and to be examined upon oath concerning the same. Provided (s. 16.) that no person shall be convicted upon any confession he shall make upon being examined as aforesaid, nor shall any such examination be given in evidence against him, unless such person shall be indicted for wilful perjury. By s. 17. every person who upon such demand or search made for arms, &c. shall refuse to deliver up the same, and also to declare to such justice of peace, &c. what arms, &c. he, or any other to his knowledge, or with his privacy, hath; or shall hinder or disturb the delivery thereof to the said justice, &c.; and also every person who shall refuse to make discovery upon oath (to be administered by such justice of the peace, &c.) concerning the premises, or, being summoned by writing under the hand of one justice of the peace, or more, (whereof notice in writing to be given to him, or left at his usual place of abode) shall, without reasonable cause, refuse or neglect to appear before such justice of peace, &c. to be examined

s. 15.

*Magistrates
may search for
arms of papists:*

*And examine
persons suspected
of concealing
them, upon oath.*

s. 16.

Proviso.

s. 17.

*Punishment of
persons refusing
to deliver or
discover arms.*

s. 18.

*Reward in
cases of persons
killed or wound-
ed in apprehend-
ing, &c. offend-
ers against this
act.*

amined as aforesaid, such offender shall be punished by fine and imprisonment, or such corporal punishment of pillory or whipping, as the court shall think proper. By s. 18. in case any person who shall apprehend, prosecute, or convict, or who shall use his endeavour to apprehend, &c. any person guilty of any of the offences aforesaid, shall be maimed or wounded on account thereof, such person shall be entitled to such reward, not exceeding £50. as the grand jury of the county shall, with the approbation of the judge of assize, direct; and in case any person shall be killed in the apprehending, or endeavouring to apprehend any offender against this act, or in making pursuit after him, then the executors, &c. of the person so killed, shall receive such reward (not exceeding £100.) as the grand jury of such county shall, with the approbation of the judge, appoint; the said rewards to be raised by the presentment of the grand jury of such county, and to be applotted, &c. as other public money presented.* By s. 21. every person who shall by force, violence, or menace, impose or tender any oath on any book, or, in any other manner, any solemn engagement on or to any person, shall be fined, imprisoned, pillored, or whipped, at the discretion of the judge; and it shall not be necessary in the indictment to set forth the said oath, &c. particularly. By s. 22. every justice of peace shall have power to summon any person within his jurisdiction, whom he shall suspect to be capable of giving material evidence concerning any offence committed against this act, and to examine him on oath, and, if he shall see cause, to bind such person in recognizance to appear and prosecute at the next assizes; and in case such person shall refuse to submit to such examination, or to enter into such recognizance, it shall be lawful for such justice of peace to commit the person so refusing to the public gaol of the county where he is a justice, until he shall submit to such examination, or enter into such recognizance, or be discharged by due course of law; provided no such examination shall sub-
ject

s. 21.

*Administering
unlawful oaths,
how punished.*

s. 22.

*Justices may on
suspicion sum-
mon, examine,
and bind wit-
nesses to prose-
cute.*

* By the 26 Geo. 3. c. 24. s. 73. 1r. grand juries, at assizes, are empowered to present any sum not exceeding £20. (to be levied on the county, or any parish or barony,) for prosecutors of offenders against 15 & 16 Geo. 3. c. 21.

ject the party examined to any prosecution or penalty, or be given in evidence against the person so examined, unless such person shall be indicted for wilful perjury in such examination. And by s. 24. if any justice of peace of the county where any offence is committed, happens to be in another county, he, or any justice of peace for such foreign county, may, upon proper information, issue his warrant to arrest any person offending against this act; and such person shall be brought before such justice, who is hereby empowered (upon due examination and probable cause) to commit the offender to prison, or to admit him to bail, if the offence with which he is charged be a bailable offence, or to discharge him if no sufficient cause for his detainer shall appear; and such justice of peace shall return all examinations and recognizances taken and entered into before him, to the next assizes for the county in which such offence is alleged to be committed; and such justice of peace may be examined on the trial of such offender in the proper county, and shall attend to give evidence, unless prevented by some sufficient reason, verified by the affidavit of the party, or some other credible person, and approved of as a reasonable excuse by the court. And by s. 28. any 2 justices of peace having reasonable cause to suspect any person to be guilty of such unlawful rising or appearing, or of having been in any unlawful assembly as aforesaid, or of intending so to be, may summon before them such person, and bind him over by his recognizance to appear at the next assizes, or general gaol delivery for the county in which he shall reside, to answer such matters as he shall be charged with, and to be of good behaviour in the mean time; and in case of refusal to appear to enter into security as aforesaid, such justices shall have power, by warrant, to commit such person to the common gaol of the county, until such person shall submit to appear and enter into such security, or until discharged by due course of law. By s. 25. nothing herein shall repeal or alter any law now in force relating to the offences aforesaid. And by s. 26. nothing herein shall extend to the peaceable meetings

s. 24.

*Powers given to
justices in so-
foreign counties.*

s. 28.

*Two justices may
summon per-
sons suspected of
being guilty of
unlawful rising,
&c. and bind
them to appear
at next assizes,
&c.*

s. 25.

Proviso.

s. 26.

Proviso as to meetings at fairs, or for innocent sports.

s. 27.

Act how proclaimed.

17 & 18 Geo. 3. c. 36. s. 8. Ir.

Provisions of 15 & 16 Geo. 3. supra, extended to cities, &c.

36 Geo. 3. c. 32. Ir.

Mode of proceeding in the county or county of the city of Dublin to obtain presentments for damages by tumultuous risings.

Riotously assembling and demolishing mills, &c. a capital felony.

9 Geo. 3. c. 29. s. 1. Eng.

s. 4.

Limitation for prosecutions.

41 Geo. 3. c. 24. G. B.

Damages how recovered.

11 Geo. 2. c. 22. s. 1. Eng.

ings of any number of persons for their lawful occasions, or at any fair or market, or reputed fair or market, or any customary assembly for innocent sports or recreation, not prohibited by law. By s. 27. every clause herein shall be read publicly in open court on the 2d day of every assizes, and the 1st day of every quarter-sessions of the peace, in every county. And the several provisions of this act are extended to all cities, and counties of cities, by the 17 & 18 Geo. 3. c. 36. s. 8. Ir. And by the 36 Geo. 3. c. 32. Ir. all persons who would be entitled to receive satisfaction for such injuries (as in the 15 & 16 Geo. 3. *supra*) within the county of Dublin, and county of the city of Dublin, by presentment of the grand juries of said counties, shall, at the next presenting term in the king's bench after the offence committed, by exhibiting to said court of K. B. such petition as by the 15 & 16 Geo. 3. is required to be exhibited to the judges of assize, have compensation made to them for such damages as they shall have sustained within the meaning of said act; and in acting on such petition, the court of K. B. shall have the same authority, as by the 15 & 16 Geo. 3. is given to the judges of assize; and the grand juries of the said two counties shall make presentments upon such petitions, as grand juries at assizes in their counties.

The 9 Geo. 3. c. 29. Eng. recites that doubts had arisen whether the 1 Geo. 1. st. 2. c. 5. Eng. (*ante* p. 618.) extends to the pulling down and demolishing of mills; and enacts, that if any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully, and with force, demolish or pull down, or begin to demolish or pull down, any wind-saw-mill, or other wind-mill, or any water-mill, or other mill, or any of the works thereto belonging; every such demolishing, &c. or beginning to demolish, &c. shall be felony without benefit of clergy. By s. 4. no person shall be prosecuted for any offence contrary to this act, unless such prosecution be commenced within 18 months after the offence committed. And by the 41 Geo. 3. c. 24. G. B. the damages sustained by such demolishing, &c. such mills, &c. shall be recovered in such manner as provided by the 1 Geo. 1. st. 2. c. 5. And the 11 Geo. 2. c. 22. Eng.

Eng. recites, that many disorderly persons have of late frequently assembled themselves in great numbers, committed great violences, &c. with intent to hinder the exportation of corn; and enacts, that if any person shall wilfully and maliciously beat, wound, or use any other violence to any person, with intent to deter or hinder him from buying of corn or grain in any market, or other place in this kingdom; or shall unlawfully stop or seize upon any waggon, cart, or other carriage, or horse, loaded with wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market-town, or sea-port of this kingdom, and wilfully and maliciously break, cut, separate, or destroy the same, or any part thereof, or the harness of the horses drawing the same; or shall unlawfully take off, drive away, kill, or wound any of such horses, or unlawfully beat or wound the driver of such waggon, &c. so loaded, in order to stop the same; or shall, by cutting of the sacks, or otherwise, scatter or throw abroad such wheat, &c. or shall take or carry away, spoil or damage the same, or any part thereof; every such person, being convicted before 2 justices of the county, &c. wherein such offence shall be committed, or before the justices of peace in open sessions, (who are hereby authorized, summarily, and finally to determine the same,) shall be sent to the common gaol, or house of correction, there to be kept to hard labour for any time not exceeding 3 months, nor less than one month; and shall by the same justices be ordered to be once publicly whipped by the master or keeper of such gaol or house of correction, in such city, market-town, or sea-port, in or near to which such offence shall be committed, on the first convenient market-day, at the market cross or market place there, between the hours of eleven and two. And by s. 2. if any person so convicted shall commit any of the said offences a second time, or if any person shall wilfully and maliciously destroy any store-house or granary, or other place where corn shall be kept in order to be exported; or shall unlawfully enter any such store-house, &c. and take any corn, flour, meal, or grain therefrom, or shall throw abroad or spoil the same, or any part thereof; or shall

Persons using violence to hinder the purchase or carriage of corn, how punished.

s. 2.

Committing such offences a 2nd time, or destroying granaries, or taking away or spoiling corn therein, or in ships, &c. felony.

- shall unlawfully enter on board any ship or vessel, and shall wilfully and maliciously take, cast or throw out therefrom, or otherwise spoil or damage any meal, flour, wheat, or grain, intended for exportation, such offender shall be guilty of felony, and be transported for 7 years; and if any such offender shall return into this kingdom before the expiration of 7 years, he shall suffer death as a felon without benefit of clergy. Provided (s. 3.) that no attainder for any offence made felony by this act, shall work any corruption of blood, loss of dower, or disinherittance of heir. And by s. 4. no person who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other law. By s. 5. the inhabitants of every hundred in England, wherein any such offence as aforesaid shall be committed, shall make full satisfaction to every person, their executors, &c. for the damages to their properties; and every person who shall sustain damages in his property by any of the said offences, may sue for and recover such damages (not exceeding £100.) against the said hundred; such damages to be sued for and levied in like manner as prescribed by the 27 Eliz. c. 13. except so much thereof as relates to giving notice, making fresh suit, or other matter otherwise provided for by this act. Provided (s. 6.) that no person shall be enabled to recover any damages by virtue of this act, unless he, by himself or his servants, within 2 days after such damage done, shall give notice of such offence to one of the constables of the hundred, or to the constable, borsholder, headborough, or tithingman of the town, parish, village, hamlet or tithing, in or near which such fact shall be committed; and shall, within 10 days after such notice, give in his examinations upon oath, or the examination upon oath of his servants being present at the time of the fact being committed, or having the care of such his property to which such damage shall be done, before any justice of peace of the county, &c. where such fact shall be committed, whether he do know the persons that committed such fact, or any of them; and if upon such examination it be confessed that he do know the persons that

s. 3 & 4.

Proviso.

s. 5.

*Satisfaction for
such damage
recoverable from
the hundred, not
exceeding
£100.*

s. 6.

*What notice to
be given, and
examination
sworn, to entitle
to compensation.*

that committed said fact, or any of them, he shall be bound by recognizance to prosecute such offenders.

Provided (s. 7.) that where any offence shall be com-

s. 7.

mitted against this act, and any one of the offenders shall be apprehended and convicted within 12 months after the

If any offender convicted within 12 months, the hundred released

offence, no hundred or franchise shall be liable to make satisfaction for the damages. And by s. 8. no person

s. 8.

who shall sustain damage by any offence contrary to this act, shall sue against any hundred, till after a year;

Limitation for actions against hundred.

nor unless the party sustaining such damage shall commence his suit within 2 years after the offence. And by

the 23 & 24 Geo. 3. c. 20. Ir. if any persons unlawfully,

23 & 24 Geo. 3. c. 20. Ir.

riotously, and tumultuously assembled together, shall

wilfully and maliciously pull down, demolish, set fire to,

Persons tumultuously assembled, and destroying, &c.

or destroy, or begin to pull down, &c. any store-house,

any store-house, &c. or taking or spoiling any

mill, granary, corn-stack, or other place where corn,

grain, meal, malt, flour, or potatoes, are usually stored

corn, &c. or by other violence obstructing the

or kept for exportation or sale; or shall unlawfully enter

or break into, or unlawfully attempt to enter or break

freedom of corn markets, and the corn trade, guilty of a capital felony.

into any such store-house, &c. or take, carry away, throw

abroad, or spoil, or attempt by force to take, &c. any

corn, &c. which shall be stored or kept therein; or shall

unlawfully enter on board any ship, vessel, or boat,

wherein any corn, &c. shall be laden, and wilfully take,

carry away, cast over-board, destroy, or damage any of

the articles laden therein; or wilfully cut, injure, spoil,

or take away the said ship, &c. or the rigging, furniture,

tackle, or rudder thereof, or any part of such ship, &c. ;

or unlawfully, wilfully, and by force, obstruct, or prevent,

or endeavour to obstruct, &c. the loading or laying

any of the said articles on board any ship, &c. ; or shall

unlawfully, wilfully, and by force, prevent, or endeavour

to prevent any ship, &c. laden therewith, or in

which any of the said articles shall be laden, from sailing;

or shall unlawfully, wilfully, and knowingly, and

by force, stop, seize, detain, take, or drive away any

horse, car, cart, carriage, or boat laden with any of

the said articles on the way to or from any mill, store,

granary, or market, sea-port or place of shipping, with

intent to prevent the corn, &c. therein, or laden there-

on,

on, or any part thereof, from being taken to the house, vessel, store-house, place, or person, to which it was intended to be carried; or shall wilfully kill or maim any horse, or other beast laden therewith; or shall wilfully and forcibly cut, or otherwise break or destroy any of the sacks, or scatter or throw abroad any of the aforesaid articles wherewith such car, &c. is laden; or take away, or distribute, or compel the owner, driver, or conductor thereof to distribute, sell, or otherwise dispose of any such article wherewith such car, cart, carriage, boat, horse, or other beast is laden, or any part thereof; or shall wilfully destroy any weir, sluice, mill-dam, drain, or outwork belonging to any mill; every such offender, and all persons unlawfully, riotously, or tumultuously assembled, who shall aid or assist in the commitment, or attempting to commit any of the said offences, shall be guilty of felony without benefit of clergy. And by s. 2. all damages which shall be sustained by means of any of the offences against this act, shall be recovered by action in any court of record, (wherein, &c.) by the person injured, his executors, &c. against the chief or other magistrate of the county of the town or city, (if the said injury shall have been committed in a county of a town or city) or against any one or more of the inhabitants of the parish in any county, if the said injury shall have been committed in any parish, not being in a county of a town or city; and if on such action judgment shall be given for the plaintiff, the damages recovered on such judgment, together with the costs, shall be levied as herein-after directed, and paid to the plaintiff, his executors, &c. By s. 3. every sheriff upon receiving any writ of execution in pursuance of any such judgment, shall, within 6 days after the receipt thereof, serve a copy of the same, under his hand and seal, on the defendant if resident within his bailiwick, and likewise on the rector, vicar, church-warden, or any one principal inhabitant of the parish, if the damage shall have been incurred by any violence committed in a parish not being in a county of a town or city, or on the town-clerk, treasurer, or other public officer in a county of a town or city,

s. 2.

Damages how recovered.

s. 3.

Damages how apportioned and levied.

city, mentioning the sum he is commanded by said writ to levy, and requiring that the said sum may be forthwith applotted and levied on the said county of a town, &c. and he shall likewise, within 6 days after the receipt of any such writ, post a notice on the door of the church, or market-house, or other conspicuous place in such county of a town, city, or parish, requiring the landholders, and inhabitants of said county of a town, &c. to meet on some certain day, not more than 14 days distant, at some place within the same, to be named in such notice, to applot the said sum upon such county of a town, &c. and to choose a collector or collectors to levy the same; and such landholders and inhabitants shall make such applotment, and choose such collector; and every collector so appointed shall levy the said sum according to said applotment, together with 1s. in the pound for his own trouble, by distress and sale of the goods of every person refusing to pay. And by s. 4. in case no such applotment shall be made, or no such collector shall be appointed, or that such collector or defendant, or some other person of the county of the town, city, or parish, shall not, within 30 days from the day mentioned in such notice for the inhabitants and landholders to meet, pay unto the sheriff the full sum mentioned in such notice, together with 1s. in the pound for his fees, the said sheriff shall levy the same off the goods of the person against whom the writ shall have been issued, his executors, &c. By s. 5. the return to every such writ shall be made by the sheriff, on the next return day which shall happen after 60 days from his receiving the same; and if the said sheriff, or any magistrate, or any constable of the county, county of the town or city, shall neglect or refuse to assist such collector or other person in the execution of his duty in levying the same, upon being thereunto required, such sheriff, &c. shall forfeit £100. to be recovered by any person who may sue by action or information; and every justice of the peace convicted thereof, shall be removed for ever from the commission of the peace. And by s. 6. if no applotment shall be made, or no collector shall be appointed

s. 4.

If no applotment, nor collector appointed, nor money paid in 30 days, sheriff to levy against the party.

s. 5.

Duty of sheriffs, magistrates, and constables, in levying money, how enforced.

s. 6.

*Party from
whom money is
levied, now
reimbursed.*

pointed pursuant to the provision aforesaid, or if the sheriff shall levy the whole, or any part of the money, off the defendant, his executors, &c. the defendant, if he be himself a magistrate, or any magistrate or justice of peace within the county, county of the town or city, to whom application shall be made by the defendant, his executors, &c. or any person inhabiting or holding land in the said county of a town, &c. shall applot the sum required to be raised, or the sum which shall have been so levied off the defendant, his executors, &c. together with the fees for the sheriff and the collector as aforesaid, on the county of the town, &c. and issue his warrants for levying and paying it to such defendant, his executors, &c. by distress and sale of goods of every person refusing to pay the sum applotted for him to pay.

s. 7.

*Persons unlaw-
fully assembling,
demolishing, &c.
any building,
&c. guilty of a
capital felony.*

By s. 7. if any persons unlawfully, riotously, and tumultuously assembled together, shall unlawfully, and with force, demolish or pull down, or begin to demolish, &c. or wilfully set fire to, or attempt to set fire to, or break into, or attempt to break into any building, dwelling-house, ware-house, work-shop, work-house, mill, granary, store-room, barn, stable, or any house, building, or out-house, every such offence shall be felony without benefit of clergy. And by s. 8. if any persons unlawfully, riotously, and tumultuously assembled, shall unlawfully and by force, in the day or night, destroy, or

s. 8.

*Tumultuously
destroying ma-
chine, &c. used
for manufacture,
or engine for
colliery or mine,
a capital felony.*

begin to destroy any machine, or part of a machine, or any tool or utensil, used or intended to be used for the purpose of manufacture; or shall unlawfully or by force cut, break, or destroy any goods manufactured, or unmanufactured; or if any person shall wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy any fire-engine, or other engine, erected for draining water from any colliery or mine, or for raising coals or minerals out of any colliery or mine, every such person shall be guilty of felony without benefit of clergy. By s. 9. every person who shall suffer any injury by means of the offences aforesaid, may bring like

s. 9.

*Such damages
now recovered.*

actions for the damages, against such persons, and such damages and costs shall be recovered, levied, and paid, in like manner as herein-before enacted, s. 2 to 6. By

s. 10.

s. 10. where any action shall be brought for damages sustained by any offence committed in any county, county of a town or city, such action may be brought at the choice of the plaintiff, in any county next adjoining thereto. And by s. 11. no recovery of damages shall be had on any action brought in pursuance of this act, unless the same shall be brought within 2 years after the offence. By s. 12. it shall be lawful for the court before which any person shall be tried for any such offence, to direct the grand jury to present (to be raised off the county, county of a town or city,) such sum as shall be proved before them, in open court, to have been expended in the taking and prosecuting such person, whether such person shall have been acquitted or not, the same to be levied as other monies presented by grand juries are levied, and to be paid to the persons who expended the same. And by s. 13. if any inhabitant of any parish on which the damages shall or ought to be levied, and costs recovered upon any action brought by virtue of this act, shall prosecute or cause to be prosecuted to conviction, any of the persons guilty of the offence, within 2 years after the committal of the offence, and shall make the same appear in open court, to the satisfaction of the judge, at the next assizes for the county wherein such parish is situate, or if in the county of Dublin, to the satisfaction of the court of king's bench, at the next, or any succeeding term, such judge or court shall direct the grand jury to present the sum levied (or which ought to be levied) off the said parish, to be raised off the county, and paid to the persons in said parish, according to the several payments made by them to the persons to whom such money, if levied off said parish, ought to have been paid; and in case any grand jury shall refuse or decline to present such sum of money, as, for the purposes aforesaid, or either of them, shall be so proved and directed, then it shall be lawful for said court or judge to refuse his or their *fiat* to every presentment made by such grand jury at such assizes or term. To this head of riots may also be referred the 28 Geo. 3. c. 27. Ir. which explains and

s. 10.

Plaintiff may bring his action in county adjoining.

s. 11.

Limitation for actions.

s. 12.

Grand juries to present expenses for taking and prosecuting offenders.

s. 13.

*Grand jury to present on county, the sum levied off the parish.*28 Geo 3. c. 27.
s. 2. Ir.

*Jurisdiction of
justices in cases
of riot at fish-
eries.*

amends the laws relative to the fisheries on the coasts of this kingdom ; and enacts, that in case of any riot or disturbance on shore, where no sufficient remedy is provided for immediately putting a stop thereto, or for enabling any justice of peace to make compensation to the person aggrieved thereby, by any law in being, it shall be lawful for any justice of peace, on complaint made on oath, to cause the person charged therewith to be brought before him, and to determine the same in a summary way on the oath of one witness, and on proof thereof to fine any such person in any sum not exceeding 40s. to be levied by distress and sale of goods, and to pay over the same to the party injured, and if no distress be found, to commit such person to prison for any time not exceeding one month, provided such fine shall not be paid within that time.* To this head of riot might also be referred various statutes relating to the offence of malicious mischief, and which will be found under that head in a subsequent chapter.

§ 2.

*Certain societies
suppressed as
unlawful assem-
blies.*

39Geo.3. c. 79.
s. 1. Eng.

II. The following statutes seem peculiarly to belong to the head of *unlawful assemblies*. The 39 Geo. 3. c. 79. Eng. recites (*inter alia*) that a traitorous conspiracy has long been carried on, in conjunction with the persons from time to time exercising the powers of government in France, to overturn the laws, constitution, and government, and every existing establishment, civil and ecclesiastical, in Great Britain and Ireland, and to dissolve the connexion between the two kingdoms; and that in pursuance of such design, divers societies have been instituted, particularly certain societies calling themselves societies of united Englishmen, united Scotchmen, united Britons, united Irishmen, and the London corresponding society ; and that the members of many such societies have taken unlawful oaths, and engagements of fidelity and secrecy, and used secret signs, and appointed

* The 11 & 12 Geo. 3. c. 18. Ir. provides specially for tumultuous assemblies in the county and county of the city of Cork ; And the 19 & 20 Geo. 3. c. 36. Ir. contains provisions relating also peculiarly to the county and county of the city of Dublin.

ed committees, secretaries, and other officers, in a secret manner; and many of such societies are composed of different divisions, branches, or parts, which communicate with each other by secretaries, delegates, or otherwise; and enacts, that these, and other corresponding societies, shall be suppressed as unlawful combinations and confederacies. And by s. 2. every society of which the members shall, according to the rules thereof, be required to take any oath or engagement within the meaning of the 37 Geo. 3. c. 123. *ante* p. 522. or any oath not required or authorized by law; or the members whereof, or any of them, shall take, or in any manner bind themselves by, any such oath or engagement, in consequence of being members of such society; or who shall take, subscribe, or assent to any test or declaration not required by law, nor authorized in the manner herein-after mentioned; or of which the names of the members, or of any of them, shall be kept secret from the society at large, or which shall have any committee or select body so chosen, that the members constituting the same shall not be known by the society at large; or which shall have any president, treasurer, secretary, delegate, or other officer, so chosen or appointed that his election, &c. shall not be known to the society at large; or of which the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, shall not be entered in a book to be kept for that purpose, and to be open to the inspection of all the members; and every society which shall be composed of different divisions or branches, or of different parts, acting in any manner separately or distinct from each other, or of which any part shall have any distinct president, secretary, treasurer, delegate or other officer, elected or appointed by or for such part, or to act as an officer for such part; shall be deemed to be unlawful combinations and confederacies; and every person who shall become a member of any such society, or who being a member of any such society at the passing of this act (12th July 1799,) shall afterwards act as
a member

s. 2.

All societies the members whereof shall be required to take any oath not authorized by law, or which shall have any committees not known to the society at large, &c. to be deemed unlawful confederacies.

- a member thereof; and every person who shall maintain correspondence or intercourse with any such society, or with any division, officer, or member thereof as such, or who shall aid, abet, or support such society, or any member or officer thereof as such, shall be guilty of an unlawful combination and confederacy. Provided (s. 3.) that nothing herein shall extend to any declaration to be taken, &c. by the members of any society, in case the form of such declaration shall have been first subscribed by 2 justices of peace for the county, &c. where such society shall ordinarily assemble, and shall have been registered with the clerk of the peace, or his deputy, for such county, &c. (for which there shall be paid a fee of 1s.) but such approbation of the justices shall remain valid no longer than until the next general session for such county, &c. unless the same shall, on application by the parties concerned, be confirmed by the major part of the justices present at such session; and if the same shall not be then and there confirmed, the provisions of this act shall from thenceforth extend to such declaration, and to all societies or persons subscribing the same, as to all acts done by them subsequent to the holding such session. By s. 4. no person who before the passing of this act shall have been a member of any such society, shall be liable to any penalty, in case such person shall not act as a member after the passing of this act. And by s. 5. nothing in this act shall extend to the meetings of any society or lodge which shall have been usually under the denomination, and in conformity to the rules of free-masons. Provided (s. 6.) that this exemption shall not extend to any such society, unless 2 of the members shall certify upon oath, (to be administered by any justice of peace or other magistrate) that such society or lodge has, before the passing of this act, been usually held under the denomination of a lodge of free-masons, and in conformity to the rules prevailing amongst the societies or lodges of free-masons in this kingdom; which certificate duly attested by such magistrate, and subscribed by the person so certifying, shall, within 2 months after the passing of this act, be deposited
- s. 3.
- Act not to extend to declarations approved by 2 justices, and registered with the clerk of the peace, and confirmed at quarter-sessions.*
- s. 4.
- Members not acting after passing this act not liable to penalty.*
- s. 5.
- Exception as to lodges of free-masons.*
- s. 6.
- Lodges of free-masons to be registered.*

deposited with the clerk of the peace for the county, &c. where such society or lodge hath been usually held: provided also that this exemption shall not extend to any such society, unless the denomination thereof, and the usual place and time of its meetings, and the names and descriptions of all the members, be registered with such clerk of the peace, within 2 months after the passing of this act, and also on or before the 25th day of March in every succeeding year. By s. 7. the clerk of the peace, or person acting in his behalf, in any such county, &c. shall receive such certificate, and make such registry as aforesaid, and inrol the same amongst the records of such county, &c. and levy the same once in every year before the general session of the justices for such county, &c.; and it shall be lawful for said justices, or for the major part of them, at their general sessions, upon complaint made to them upon oath, by any credible person, that the continuance of the meetings of any such lodge or society is likely to be injurious to the public peace, to direct that its meetings shall be discontinued; and any meeting held notwithstanding such order, and before the same shall, by the like authority, be revoked, shall be deemed an unlawful combination and confederacy under this act. By s. 8. every person who shall in breach of the provisions hereof, be guilty of any unlawful combination and confederacy as in this act is described, shall and may be proceeded against in a summary way, either before one justice of peace, or more, for the county, &c. where such person shall happen to be, or by indictment to be preferred in the county, &c. in England, where the offence shall be committed, or by indictment in the court of justiciary, or in any of the circuit courts in Scotland, if the offence be committed in Scotland; and every person being convicted of any such offence, on the oath of one witness, by such justice as aforesaid, shall be committed to the common gaol or house of correction for such county, &c. for 3 calendar months, or shall be by such justice adjudged to forfeit £20. as to such justice shall seem meet; and in case such sum shall not be forthwith paid to such justice,

s. 7.

Clerk of the peace to lay certificate and registry before the general session, yearly, who may suppress any lodge.

s. 8.

How offenders proceeded against and punished.

s. 9.
*Justices may
 mitigate punish-
 ment.*

s. 10.
Proviso.

s. 11.
Proviso.

s. 12.
Proviso.

s. 13.

tice, he shall, by warrant, cause the same to be levied by distress and sale of the offender's goods, together with the costs of such distress and sale, and for want of sufficient distress, shall commit such offender to the common gaol or house of correction of such county, &c. for any time not exceeding 3 calendar months; and every person convicted of any such offence upon indictment, may be transported for 7 years, or imprisoned for any time not exceeding 2 years, as the court shall think fit; and every such offender who shall be ordered to be transported, shall be liable to all laws concerning offenders ordered to be transported. But by s. 9. it shall be lawful for the justice of peace, by or before whom any person shall, in pursuance of this act, be convicted of any combination, &c. to mitigate the punishment hereinbefore directed, if he shall see cause, provided it be not reduced to less than one third. By s. 10. any person who shall be prosecuted before any justice in a summary way, for any offence against this act, and shall be acquitted or convicted, shall not afterwards be prosecuted for the same offence; and any person who shall be convicted or acquitted upon any indictment, shall not be prosecuted before any justice of peace, in a summary way, for the same offence. Provided (s. 11.) that nothing in this act shall prevent any prosecution by indictment, or otherwise, for any offence within the meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted for such offence under this act; save that no person shall be prosecuted for having been, before the passing of this act, a member of any society hereby declared to be unlawful, if such person shall not have acted as a member after the passing of this act. By s. 12. nothing herein shall discharge any person in custody at the passing of this act, or who, having been in custody, shall have been discharged on bail or recognizance, from any prosecution which might have been had against such person if this act had not been made. By s. 13. if any person shall, knowingly, permit any meeting of any society hereby declared to be unlawful, or of any division,

division, branch, or committee of such society, to be held in his house or apartment, such person shall, for the first offence, forfeit £5. and shall, for any such offence committed after the date of such first conviction, be deemed guilty of an unlawful combination, &c. And by s. 14. it shall be lawful for any 2 justices of peace acting for any county, &c. upon evidence on oath that any meeting of any society hereby declared to be unlawful, or any meeting for any seditious purpose, hath been held (after the passing of this act) at any house or place licensed for the sale of ale, beer, wine, or spirituous liquors, to declare such license to be forfeited; and the person so keeping such house, shall, from the date of such adjudication, be liable to all the penalties for any act done after that day, which such person would be liable to if such license had expired on that day.

Penalty for permitting unlawful assemblies.

s. 14.

Justices may declare the licenses of houses forfeited where unlawful meetings held.

And whereas divers places have been used for delivering lectures or discourses, and holding debates of a seditious and immoral nature; and other meetings have been used for seditious and immoral purposes, under the pretence of being places of meeting for the purpose of reading books, pamphlets, newspapers, or other publications; this statute further enacts (s. 15.) that every house, room, field, or other place, at or in which any lecture or discourse shall be publicly delivered, or any public debate had on any subject, for the purpose of raising money from the person admitted, or to which any person shall be admitted by payment of money, or by any ticket or token of any kind delivered in consideration of money or other valuable thing, or in consequence of paying or giving, or having paid or given, or having agreed to pay or give any money, &c. or where any money, &c. shall be received from any person admitted, either under pretence of paying for any refreshment or other thing, or under any other pretence; and every house, &c. which shall be opened or used as a place of meeting for the reading of books, pamphlets, newspapers, or other publications, and to which any person shall be admitted by payment of money, &c. (*ut supra*); shall be deemed a disorderly house within the meaning of

Every place where lectures, debates, or readings, for the purpose of raising money, to be deemed disorderly, unless previously licensed.

s. 15.

Penalty on persons opening such houses, conducting the proceedings, or therein debating &c.

s. 16.

Person appearing as master liable to prosecution, although not the real occupier.

s. 17.

Justices may demand admittance to such houses.

Penalty for refusal.

s. 18.

of the 36 Geo. 3. c. 8. Eng.* unless the same shall have been previously licensed in the manner herein-after mentioned; and the person by whom such house, &c. shall be opened or used for any of the purposes aforesaid, shall forfeit £10. for every day or time that such house, &c. shall be so opened, &c. to such person as will sue for the same, and be otherwise punished as the law directs in cases of disorderly houses; and every person managing or conducting the proceedings, or acting as moderator, president, or chairman, at such house, &c. or therein debating, or delivering any discourse or lecture, or furnishing or delivering any book, pamphlet, newspaper, or other publication; and also every person who shall pay, give, collect or receive, or agree to pay, &c. any money, or thing, in respect of the admission of any person into any such house, &c. or shall deliver out, distribute, or receive any such ticket or token as aforesaid, knowing such house, &c. to be opened or used for any such purpose as aforesaid, shall forfeit £20. And by s. 16. any person who shall appear, act or behave as master or mistress, or as the person having the command, government, or management of any such house, &c. shall be deemed to be a person by whom the same is opened as aforesaid, and shall be liable to be punished as such, notwithstanding he or she be not the real owner or occupier thereof. By s. 17. it shall be lawful for any justice of peace of the county, &c. who shall, by information upon oath, have reason to suspect that any house, &c. or any part thereof, is opened or used for the purpose of delivering lectures, &c. or for public debate, or for reading books, &c. contrary to this act, to go to such house, &c. and demand to be admitted therein; and in case such justice shall be refused admittance to such house, &c. the same shall be deemed to be a disorderly house or place within the meaning of this act, and of the 36 Geo. 3. c. 8.; and every person refusing such admittance shall forfeit £20. Provided (s. 18.) that it shall be lawful for 2 justices of peace

* This statute has since been suffered to expire.

peace for the county, &c. where any house, &c. shall be intended to be opened for any of the purposes aforesaid, by writing under their hands and seals, at their general sessions of the peace, or at any special session to be held for the particular purpose, to grant a license to any person desiring the same, to open such house, &c. for the purpose of delivering for money any such lectures, &c. as aforesaid, on any subjects, the same being clearly expressed in such license, or for the purpose of reading books, &c.; for which license a fee of 1s. shall be paid, and the same shall be in force for one year and no longer, or for any less space of time therein to be specified; and which license it shall be lawful for the justices of peace for the same county, &c. at any general sessions to revoke, by any order of such justices; a copy whereof shall be delivered to, or served upon the person to whom said license shall have been granted, or shall be left at the house, &c. for which such license shall have been granted, and thereupon such license shall determine. *Justices in session may grant licenses for lecturing, &c. and may revoke them.* Provided (s. 19.) that it shall be lawful for any justice of peace of any county, &c. where any such house, &c. shall be so licensed, to go to such house, &c. at the time of delivering any such lecture, &c. or at the time appointed for delivering any such lecture, &c. or whilst such house, &c. shall be opened or used, or during the time appointed for using the same, as a place for reading books, &c. and demand admittance; and in case such justice shall be refused admittance to such house, &c. the same shall be deemed, notwithstanding such license, a disorderly house or place within the meaning of this act; and every person refusing such admittance shall forfeit £20. *Justices may demand admittance to any licensed place.* By s. 20. it shall be lawful for any 2 justices of peace acting for any county upon evidence, on oath, that any house so licensed, &c. is commonly used for the purpose of delivering there lectures, &c. of a seditious or immoral tendency, or that books, &c. of a seditious or immoral nature are there commonly kept and delivered to be read, to declare such license to have been forfeited. *Penalty for refusal.* By s. 21. every

s. 19.

s. 20.

Justice on evidence that any licensed place is used for lectures of a seditious or immoral tendency, &c. may declare the license forfeited.

s. 21.

*Alehouses, &c.
to be deemed li-
censed for read-
ing; but justi-
ces may declare
license forfeited.*

every house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, shall be deemed a house, &c. licensed for reading books, &c. within the meaning of this act: but it shall be lawful for any 2 justices of peace for the county, &c. where such house, &c. shall be, upon evidence, upon oath, that books, &c. of a seditious or immoral nature, are usually distributed for the purpose of being read at such house, &c. to declare the license for selling ale, &c. under authority whereof such house, &c. shall be used for selling ale, &c. to have been forfeited; and the person so keeping such house, &c. shall, from the day of the date of such adjudication, be liable to all the penalties to which such person would be subject, if such license had expired on that day, for any thing done after that day. By s. 22.

s. 22.

*Proviso as to
universities, inns
of court, and
Gresham college.*

nothing in this act shall extend to any lecture or discourse to be delivered in any of the universities of these kingdoms by any member thereof, or any person authorized by the chancellor, vice-chancellor, or other proper officer of such universities; or to any lecture, &c. to be delivered in the public hall of any of the inns of court or chancery, by any person authorized by the benchers of the inns of court, or by the professors in Gresham college; and no payment made to any school-master or other person by law allowed to teach and instruct youth, in respect of any lectures, &c. delivered by such school-master, &c. for the instruction only of such youth as shall be committed to his instruction, shall be deemed a payment of money for admission to such lectures, &c. within the meaning of this act.

*Suits for penal-
ties when
brought.*

s. 34.

By s. 34. no person shall be prosecuted or sued for any penalty imposed by this act, unless such prosecution be commenced, or such action brought, within 3 calendar months after such penalty shall be incurred. And by

s. 35.

*Mode of pro-
ceeding in such
suits.*

s. 35. any pecuniary penalty imposed by this act, exceeding £20. may be recovered by any person who will sue for the same by action of debt in any court of record at Westminster, if such penalty shall have been incurred in England, &c. and in his majesty's court of exchequer in Scotland, if such penalty shall have been incurred in

Scotland,

Scotland, in which action it shall be sufficient to allege that the defendant is indebted to the plaintiff in £20. (being the sum demanded by such action) being forfeited by an act made and passed in the 39th year of his majesty king George the third, intituled "An act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices;" and the plaintiff, if he shall recover, shall have his full costs; and any penalty imposed by this act, and not exceeding £20. and for the recovery whereof no provision is hereinbefore contained, may be recovered before any justice of peace for the county, &c. in which the same shall be incurred, or the person incurring the same shall happen to be, in a summary way; and in case such last-mentioned penalty shall not be forthwith paid, such justice shall, by warrant directed to any constable or peace officer, cause the same to be levied by distress and sale of the offender's goods, together with all costs attending such distress and sale; and in case no sufficient distress can be had, such justice shall commit the offender to the common gaol, or house of correction, for such county, &c. for any time not exceeding 6 nor less than 3 calendar months. And by s. 36. all pecuniary penalties shall be applied, one moiety to the plaintiff in such action, or the informer before any justice, and the other to the king. By s. 37. every action or suit brought against any justice of peace, or other person, for any thing done in pursuance of this act, shall be commenced within 3 calendar months after the fact committed; and the venue in such actions shall be laid in the county where the fact was committed, and the defendant may plead the general issue, &c. and if such action be commenced after the time so limited, or the venue be laid in any other place than as aforesaid, the jury shall find a verdict for the defendant, who shall have double costs of such verdict, or of a verdict upon the merits, or of nonsuit, discontinuance, or judgment upon demurrer. By s. 38. convictions by justices of peace for offences against this act, and adjudications of forfeitures

s. 36.

Application of penalties.

s. 37.

*Limitations of actions.**Pleading.**Costs.*

s. 38.

Convictions, &c. to be in the forms in schedule annexed to this act.

All assemblies, committees, &c. exercising a right to represent any number or description of the people, under pretence of petitioning, &c. unlawful assemblies.

33 Geo. 3. c. 29. s. 1. Ir.

Exception as to the house of commons, and of convocation.

s. 2.

Persons giving notice of such elections, or acting therein, guilty of a high misdemeanor.

s. 3.

Saving for elections by corporate bodies.

s. 4.

feitures of licenses, and notices and certificates delivered, in pursuance of this act, shall be in the several forms set forth in the schedule to this act annexed.

The only statute in force in Ireland, which is at all similar to the 39 Geo. 3. c. 79. Eng. *supra*, is the 33 Geo. 3. c. 29. Ir. (commonly called the Convention Act) which declares and enacts, that all assemblies, committees, or other bodies of persons elected, or in any other manner constituted or appointed to represent, or assuming or exercising a right or authority to represent the people of this realm, or any number or description of the people of the same, or the people of any province, county, city, town, or other district within the same, under pretence of petitioning for, or in any other manner procuring an alteration of matters established by law in church or state, save and except the knights, citizens, and burgesses elected to serve in the parliament thereof, and except the houses of convocation duly summoned by the king's writ, are unlawful assemblies; and it shall be lawful for any mayor, sheriff, justice of peace, or other peace officer, and they are required, within their jurisdictions, to disperse all such unlawful assemblies, and if resisted to enter into the same, and apprehend all persons offending in that behalf. And by s. 2. if any person shall give or publish, or cause to be given, &c. any written or other notice of election to be holden, or of any manner of appointment of any person to be the representative, delegate, or to act by any other name or description, as representative, &c. of the inhabitants, or of any description of the inhabitants of any province, county, city, town, or other district within this kingdom, at any such assembly; or if any person shall attend and vote at such election, &c. or by any other means vote or act in the choice or appointment of such representatives, &c. every such offender shall be deemed guilty of a high misdemeanor. Provided (s. 3.) that nothing herein shall affect elections to be made by bodies corporate, according to the charters and usage of such bodies. And by s. 4. nothing herein shall in any manner prevent or impede the right of

of his majesty's subjects to petition his majesty, or both houses, or either house of parliament, for redress of any public or private grievance.

And for the right to petition king or parliament.

III. Next as to the offence of *tumultuous petitioning*: the § 3.

13 Car. 2. st. 1. c. 5 Eng. enacts, that no person shall solicit, labour, or procure the getting of hands, or other consent, of any persons above the number of 20, to any petition, complaint, remonstrance, declaration, or other address to the king, or both or either houses of parliament, for alteration of matters established by law in church or state, unless the matter thereof have been first consented unto and ordered by 3 or more justices of that county, or by the major part of the grand jury of the county, or division of the county, where the same matter shall arise, at their assizes, or quarter-sessions, or if arising in London, by the lord mayor, aldermen, and commons in common-council assembled; and no person shall repair to his majesty, or both or either houses of parliament, upon pretence of presenting or delivering any petition, &c. accompanied, at any one time, with above the number of 10 persons; upon pain of incurring a penalty not exceeding £100. and 3 months imprisonment; such offences to be prosecuted at the court of king's bench, or at the assizes or quarter-sessions, within 6 months after the offence, and proved by 2 witnesses. Provided (s. 3.) that this act shall not extend to hinder any persons, not exceeding 20, to present any public or private grievance or complaint to any member of parliament after his election, and during the continuance of parliament, or to the king; nor extend to any address to his majesty, by all or any of the members of both or either houses of parliament, during the sitting of parliament, but that they may enjoy their freedom of access to his majesty as heretofore. No statute similar to this has been passed in Ireland.

No person shall solicit or procure any petition, &c. to king or parliament, of more than 20 persons, unless sanctioned by 3 justices, or major part of grand jury.

13 Car. 1. st. 1. c. 5. s. 1 & 2. Eng.

Number presenting petition, &c. not to exceed 10.

Penalty.

s. 3.

Proviso.

IV. To restrain the offence of *forcible entry or detainer*, § 4.

the 5 Ric. 2. st. 1. c. 8. E. & I. enacts, that none shall make any entry into any lands or tenements, but in case where entry is given by law; and in such case not with strong hand, nor with multitude of people, but in a peaceable

Penalty for forcible entry.

5 Ric. 2. st. 1. c. 8. E. & I.

a peaceable manner; upon pain of being punished by imprisonment, and to be ransomed at the king's will.

15 Ric. 2. c. 2. E. & I. And by the 15 Ric. 2. c. 2. E. & I. the justices of peace, upon complaint of any such forcible entry, shall take

Duty of justices of peace in cases of forcible entry or detainer.

sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly after such entry made, they shall be taken and put in the next gaol, by the record of the same justices, until they have made fine and ransom to the king: And all the people of the county, as well sheriffs as others, shall be attendant upon the justices to arrest such offenders, upon pain of imprisonment, and to make fine to the king. And in like manner it shall be done of them that make such forcible entries into benefices or offices of holy church. The 8 Hen. 6. c. 9. E. & I. 31 Eliz. c. 11. Eng. 21 Jac. 1. c. 15. Eng. and 10 Car. 1. st. 3. c. 13. Ir. which provide the remedy of restitution for the injury of forcible entry or detainer, have been already stated in the preceding part of this

Antep. 123-4. digest. The following statutes relative to this offence are peculiar to the law of Ireland. By the 26 Geo. 3.

26 Geo. 3. c. 24. s. 64. Ir.

Persons taking or keeping forcible possession, or resisting process for giving possession, to be transported for 7 years.

c. 24. s. 64. Ir. if any person shall forcibly, and without due process of law, take the possession of any house, land, or tenement, and forcibly, and without due authority by law, hold such possession, so taken by force, or shall forcibly oppose or resist the execution of any process of law, for giving or quieting the possession of any house, &c. he shall be guilty of felony, and be transported, and the court shall have power to order him to be transported for 7 years out of Europe.

s. 65.

Proceeding to have such offenders proclaimed.

And by s. 65. if any person shall be presented or indicted by the grand jury at any assizes or quarter sessions, for any such offence, such presentment, &c. shall, forthwith, be returned to the clerk of the council by the clerk of the crown, or clerk of the peace, acting at such assizes or sessions; and the person named in such presentment, &c. shall, by proclamation of the lord lieutenant and council, be ordered to surrender himself; and in case he do not, within the time limited by such proclamation,

clamation, surrender himself to one justice of peace, or more, of the county, &c. where such presentment, &c. shall be made, he shall be deemed convict of felony, and be transported, and the court shall have power to order him to be transported for 7 years; and every person who shall knowingly conceal, aid, abet, or succour such person, after the time he shall be presented or indicted, and proclaimed, shall be guilty of felony, and be transported for 7 years. And by s. 66. the printed proclamation wherein such person shall be mentioned to be so presented, &c. shall be sufficient evidence against such person. The 25 Geo. 2. c. 12. Ir. also contains clauses similar to those of the 26 Geo. 3. c. 24. s. 65. & 66. *supra*; but further provides (s. 3.) that before any grand jury shall so present any person, examination shall be taken before some judge of the king's bench, judge of assize, or justice of peace, upon oath; which examination shall be lodged with the clerk of the crown or peace for the county or place where such person shall be presented, and a copy thereof shall be certified, together with the presentment, to the chief governor and council of this kingdom, before the person so presented shall be proclaimed. And by s. 4. whenever a sheriff or other officer, duly authorized to execute any process of the law for giving, quieting, or restoring of the possession of lands or tenements, shall be forcibly resisted and prevented from executing the same, every person having right to be thereby quieted in or restored to their possessions, shall, from the time of such resistance, be deemed to be in actual possession of such lands, &c. and shall be entitled to the rents and profits of such lands, &c. from the time of the judgment or decree on which such process was founded; and the payment of rent becoming due after such judgment, &c. to any other person, shall be unlawful and void; and every person who shall unlawfully keep possession of such lands, &c. after the sheriff, &c. shall have been prevented from executing such process, shall forfeit to the person who ought to have been quieted or restored by such process, double the value of the rents, &c. of such lands, &c.

If they shall not surrender according to proclamation, deemed felons, and transported.

Persons aiding, &c. also felons.

s. 66.

Printed proclamation, evidence.

25 Geo. 2. c. 12. s. 1 & 2. Ir.

s. 3.

Before presentment, examination to be taken, &c.

s. 4.

Persons having right deemed in actual possession from time of resistance of process, and entitled to profits from time of judgment.

Persons keeping possession after resistance, forfeit to the party double value.

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from the time of such judgment, &c.; to be recovered by action, &c. in any of his majesty's courts.

§ 5.

Persons to come to parliaments, &c. without arms, &c.

7 Edw. 1. st. 1. E. & I.

2 Edw. 3. c. 3. E. & I.

None to come to the king's courts, &c. with arms, &c.

Nor ride or go armed.

V. The offence of *riding or going armed* to the terror of the people, was first provided for by the 7 Edw. 1. st. 1. E. & I. which enacts, that in all parliaments, treaties, and assemblies, within the realm of England, every man shall come without force or arms, well and peaceably, to the honour, and in the peace of the king. And by the 2 Edw. 3. c. 3. E. & I. no man, great or small, of what condition soever he be, except the king's servants in his presence, and his ministers in executing of the the king's precepts, or of their office, and such as be in their company assisting them, and also upon a cry made for arms to keep the peace, and the same in such places where such acts happen, shall be so hardy to come before the king's justices, or other of the king's ministers doing their office, with force and arms, nor bring any force in affray of the peace, nor to go or ride armed, by night or by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in any part elsewhere, upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure. And the king's justices in their presence, sheriffs, and other ministers in their bailiwicks, lords of franchises, and their bailiffs in the same, and mayors and bailiffs of cities and boroughs, within the same cities and boroughs, and borough-holders, constables, and wardens of the peace within their wards, shall have power to execute this act: And the justices assigned, at their coming down into the country, shall have power to inquire how such officers and lords have exercised their offices in this case, and to punish those whom they find that have not done that which pertained to their office.

7 Ric. 2. c. 13. E. & I.

20 Ric. 2. c. 1. E. & I.

And this statute was further enforced by the 7 Ric. 2. c. 13. E. & I. which enacts, that no man shall ride in harness within the realm, nor with launcegays, upon pain of forfeiture of the same in whose hands soever they be found contrary to the 3 Edw. 3. c. 3. *supra*, without the king's special license. And by the 20 Ric. 2. c. 1. E. & I. no lord, knight, nor other, shall go or ride, by night or by day, armed, nor bear sallet or skull of iron,

nor

nor other armour, upon the pain in the 2 Edw. 3. *supra*, save the king's officers in doing their office. By the 10 Hen. 7. c. 12. Ir. no man shall keep any ordnance or artillery, *viz.* great guns or hand guns, (except only long bows, arrows, and bills,) upon pain of forfeiture; and if any person keep such ordnance without the license of the lord lieutenant, he shall forfeit £20. to be levied on his lands and goods.

10 Hen. 7. c. 12. Ir.

Penalty for keeping ordnance, &c.

VI. The offence of *affray* is particularly prohibited by the 11 Hen. 6. c. 11. E. & I. which enacts, that if any assault or affray be made to any lord, knight of the shire, citizen or burgess, come to the parliament or other council of the king, by his command, and there being and attending the parliament or other council, proclamation shall be made in the most open place of the town by 3 several days, that the party offending render himself before the king in his bench, within a quarter of a year after the proclamation, if it be in term time, or else at the next day in term following the said quarter; and if he do it not, he shall be attainted of the fact, and pay to the party grieved his double damages, to be taxed by the discretion of the justices, or by inquests, and make fine and ransom at the will of the king: And if he come and be found guilty by inquest, examination, or otherwise, he shall pay to the party grieved his double damages found by the inquest, or taxed by the discretion of the justices, and make fine and ransom at the king's will. And by the 5 & 6 Edw. 6. c. 4. Eng. if any person shall, by words only, quarrel, chide or brawl in any church or church-yard, it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by 2 witnesses, to suspend every person so offending, that is, if he be a layman, *ab ingressu ecclesiæ*, and if he be a clerk, from the ministration of his office, for so long as the ordinary shall think meet. And by s. 2. if any person shall smite or lay violent hands upon any other, either in any church or church-yard, then, *ipso facto*, every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation. And by s. 3. if

§ 6.

Affray or assault against lords, knights, &c. coming to parliament, &c. how punished.

11 Hen. 6. c. 11. E. & I.

5 & 6 Edw. 6. c. 4. Eng.

Affrays, &c. in church or church-yard, how punished.

s. 2.

Any person assaulting another in church, &c. excommunicated

s. 3.

Any person using a weapon in church, &c. to have his ears cut off.

Or to be branded with the letter F.

any person shall maliciously strike any person with any weapon in any church or church-yard, or shall draw any weapon in any church or church-yard, to the intent to strike another with the same weapon, such offender, being convicted by verdict, or confession, or by 2 witnesses, before the justices of assize, justices of *oyer and terminer*, or justices of peace in their sessions, shall be adjudged to have one of his ears cut off: And if such person shall have no ears whereby to receive such punishment, then to be marked and burned in the cheek with a hot iron, having the letter F. therein, whereby he may be known for Fray-maker and Fighter; and besides every such person to stand excommunicated. No statute similar to this has been passed in Ireland.

§ 7.

Challenging to fight, &c. on account of money won by gaming, &c. how punished.

9 Ann. c. 14.
s. 8. Eng.

11 Ann. c. 5.
s. 7. Ir.

VII. Nearly allied to the offence of affray, is that of *challenging to fight*: in respect to which the 9 Ann. c. 14. Eng. contains the following provision. By s. 8. in case any person shall assault and beat, or challenge or provoke to fight, any other person, upon account of any money won by gaming, playing or betting at any of the games prohibited by this act, (which will be stated in a subsequent chapter,) such offender, being convicted upon indictment or information, shall forfeit to the king all his goods and personal estate, and shall suffer imprisonment in the common gaol of the county where such conviction shall be, for 2 years. The 11 Ann. c. 5. Ir. contains the same provision.

§ 8.

Punishment for spreading false news.

3 Edw. 1. c. 34.
E & I.

2 Ric. 2. st. 1.
c. 5. E. & I.

VIII. By the 3 Edw. 1. c. 34. E. & I. none shall be so hardy to tell or publish any *false news* or tales, whereby discord, or occasion of discord or slander, may grow between the king and his people, or the great men of the realm; and he that doth so, shall be taken and kept in prison, until he hath brought him into the court, which was the first author of the tale. And the 2 Ric. 2. st. 1. c. 5. E. & I. prohibits upon the like pain the devising, speaking, or telling any false things of the prelates, lords, chancellor, treasurer, clerk of the privy seal, steward of the king's house, justices of the one bench or the other, and of other great officers of the realm: And the 12 Ric. 2. c. 11. E. & I. further provides, that when any such

such offender is taken and imprisoned, and cannot find him by whom the speech be moved, he shall be punished by the advice of the council.

IX. Next as to *false and pretended prophecies*: By the § 9.
 5 Eliz. c. 15. Eng. if any person do advisedly and directly *Punishment of*
 advance, publish, and set forth by writing, printing, *false prophecies*
 signing, or any other open speech or deed, to any per- *to excite re-*
 son, any fond, fantastical, or false prophecy, upon or *bellion, &c.*
 by the occasion of any arms, fields, beasts, badges, or 5 Eliz. c. 15.
 other like things accustomed in arms, cognizances, or s. 1 & 2. Eng.
 signets, or upon or by reason of any time, year, or day,
 name, bloodshed or war, to the intent thereby to make
 any rebellion, insurrection, dissension, loss of life, or
 other disturbance within this realm, or other dominions;
 such offender shall suffer imprisonment for one year,
 and forfeit £10. And by s. 3. if such offender after such s. 3.
 conviction, eftsoons offend in any of the premises, he *Punishment for*
 shall for his 2nd offence suffer imprisonment during life, *2nd offence.*
 and shall forfeit his goods and chattels real and personal,
 the moieties of such forfeitures to the crown, and the
 other to him that will sue in any court of record, by ac-
 tion, &c. And by s. 4. every justice of assize, justice s. 4.
 of *oyer* and *terminer*, and justice of peace, shall have *Offences where*
 power to inquire, &c. of all the offences aforesaid. Pro- *inquirable.*
 vided (s. 5.) that no person shall be impeached for any s. 5.
 offence against this act, unless accused within 6 months
 next ensuing any such offence. No statute similar to *Limitation.*
 this has been made in Ireland.

X. To remove doubts concerning the functions of § 10.
 juries in cases of *libel*; the 32 Geo. 3. c. 60. Eng. de- *On trials for*
 clares and enacts, that in the trial of an indictment or *libels the jury*
 information for the making or publishing any libel, the *may give a ge-*
 jury sworn to try the issue may give a general verdict of *neral verdict.*
 guilty or not guilty upon the whole matter put in issue; 32 Geo. 3. c. 60.
 and shall not be required or directed, by the court or Eng.
 judge before whom such indictment shall be tried, to
 find the defendant guilty, merely on the proof of the
 publication by such defendant of the paper charged to
 be a libel, and of the sense ascribed to the same in
 such indictment, &c. Provided (s. 2.) that such judge, s. 2.
 &c.

But the court may give its opinion as in other cases.

s. 3.

The jury may find a special verdict.

s. 4.

The defendant may move in arrest of judgment.

33 Geo. 3. c. 43. Ir.

39 Geo. 3. c. 79. s. 23. Eng.

Printers to give notice to clerk of the peace of keeping any printing press, or types for printing.

Duty of clerk of the peace thereon.

Penalty of printers not complying with these requisites.

s. 24.

Printers to the king, or universities, excepted.

s. 25.

Letter founders and printing press makers to give notice to clerk of the peace.

&c. shall, according to his discretion, give his opinion and directions to the jury on the matter in issue between the king and the defendant, as in other criminal cases.

And by s. 3. nothing herein shall prevent the jury from finding a special verdict, as in other criminal cases.

And by s. 4. in case the jury shall find the defendant guilty, it shall be lawful for such defendant to move in arrest of judgment on such ground, and in such manner as he might have done before the passing of this act.

The 33 Geo. 3. c. 43. Ir. is the corresponding statute in Ireland. The 39 Geo. 3. c. 79. s. 23. Eng. the other clauses

of which have been already stated, (*ante* p. 644.) recites (*inter alia*) that many societies established of late years for treasonable and seditious purposes, have caused to be published in great quantities, divers printed papers of an irre-

ligious, treasonable, and seditious nature; and therefore provides, that every person having any printing press, or types for printing, shall cause a notice thereof, signed in the presence of and attested by one witness, to be delivered to the clerk of the peace acting for the county, &c. where the same shall be intended to be used, or his deputy, according to the form prescribed in a schedule

hereunto annexed; and such clerk of the peace, &c. shall grant a certificate in the form prescribed in a schedule hereunto annexed, (for which such clerk of the peace shall receive the fee of 1s); and such clerk of the peace, &c. shall file such notice, and transmit an attested copy thereof to one of his majesty's principal secretaries of state; and every person who not having delivered such notice, and obtained such certificate, shall keep or use any printing press, or types for printing, or having delivered such notice, and obtained such certificate, shall use any printing press or types for printing in any other place than the place expressed in such notice, shall forfeit £20.

Provided (s. 24.) that nothing herein shall extend to his

majesty's printer for England or Scotland, or the public presses belonging to the universities of Oxford and Cambridge.

And by s. 25. every person carrying on the

business of a letter-founder, or maker or seller of types

for printing, or of printing presses, shall cause notice

of his intention to carry on such business to be delivered

to

to the clerk of the peace of the county, &c. where such person shall propose to carry on such business, or his deputy, in the form prescribed in a schedule to this act annexed; and such clerk of the peace, &c. shall grant *Duty of clerk of the peace thereon.* a certificate in the form also prescribed in said schedule (for which such clerk of the peace, &c. shall receive 1s.) and shall file such notice, and transmit an attested copy thereof to one of the principal secretaries of state; and *Penalty for not giving such notice.* every person who shall carry on such business, or make or sell any type for printing, or printing press, without having given such notice, and obtained such certificate, shall forfeit £20. And by s. 26. every person who shall s. 26. sell types for printing, or printing presses, as aforesaid, shall keep a fair account in writing, of all persons to *An account to be kept of types and printing presses sold.* whom such types, &c. shall be sold, and shall produce such accounts to any justice of peace who shall require the same; and if such person shall neglect to keep such account, or shall refuse to produce the same to any such justice, on demand in writing to inspect the same, such person shall forfeit £20. By s. 27. every person who shall s. 27. print any paper or book, which shall be meant to be published or dispersed, whether the same shall be sold or given away, shall print upon the front of every such paper, if the same shall be printed on one side only, and *The name and abode of printer to be printed on every paper or book.* upon the first and last leaves of every paper or book which shall consist of more than one leaf, in legible characters, his name, and the name of the city, town, parish, or place, and also the name (if any) of the square, street, lane, court, or place, in which his dwelling house or usual place of abode shall be; and every person who shall omit so to print his name and place of abode on every such paper or book printed by him, and also every person who shall publish or disperse, or assist in the publishing or dispersing, either *gratis* or for money, *Penalty for default, &c.* any printed paper or book, which shall have been printed after 40 days from the passing of this act, and on which the name and place of abode of the person printing the same, shall not be printed, shall, for every copy of such paper so published or dispersed, forfeit £20. By s. 28. nothing in this act shall extend to any paper printed by the authority and for the use of either house of s. 28. *Proviso.* parliament

- s. 29.*
Printers to keep a copy of every paper they print, and write thereon the name and abode of employer.
 parliament. By s. 29. every person who shall print any paper for hire, reward, gain, or profit, shall carefully keep one copy, at least, of every paper so printed by him, on which he shall write, or cause to be written or printed, in legible characters, the name and place of abode of the person by whom he shall be employed to print the same; and every person printing any paper for hire, &c. who shall omit to write, or cause to be written, &c. the name and place of his employer on one of such printed papers, or to preserve the same for 6 calendar months after the printing thereof, or to produce the same to any justice of peace, who, within 6 calendar months, shall require to see the same, shall forfeit £20.
- s. 30.*
Persons selling, &c. any paper without the name, &c. of printer, may be taken before a justice.
 And by s. 30. it shall be lawful for any person to whom or in whose presence any printed paper, not having the name and place of abode of any person printed thereon in manner herein-before directed, or having a fictitious name, &c. printed thereon, shall be sold or offered for sale, or shall be delivered *gratis*, or offered so to be, or shall be pasted, fixed, or left in any public place, or in any other manner exposed to public view, to seize the person so selling, &c. such printed paper, and convey him before some justice of peace for the county, &c. where such person shall be seized, or to deliver him to some constable or peace officer, to be conveyed before such justice, &c. that such justice may determine whether such person hath been guilty of any offence against this act. Provided (s. 31.) that nothing herein shall extend to the impression of any engraving, or to the printing by letter press, of the name, or the name and address, or business or profession of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction, or otherwise. And by s. 32. nothing herein shall extend to alter any provision contained in any act of parliament now in force respecting the printing, publishing, or distributing any printed newspaper, or other printed paper. By s. 33. if any justice of peace acting for any county, &c. shall, from information upon oath, have reason to suspect that any printing press or types for printing is or are used or kept for use without notice given and certificate obtained as required
- s. 31.*
Engravings, &c. excepted.
- s. 32.*
Proviso as to newspapers.
- s. 33.*
A justice may empower a peace officer to search for illegal presses, types, and printed papers.

quired by this act, or in any place not included in such notice or certificate, it shall be lawful for such justice, by warrant, to direct any constable, or other peace officer, in the day time, with such persons as shall be called to his assistance, to enter into any house, &c. and search for such printing press, &c.; and it shall be lawful for such peace officer, with such assistance as aforesaid, to enter into such house, &c. in the day time, and to seize and carry away every printing press found therein, together with all types and other articles thereto belonging, and used in printing, and all printed papers found in such house, &c.

By the 23 & 24 Geo. 3. c. 28, s. 3, Ir. if any printer, publisher, or other person, shall ask or receive any money or other reward for printing or publishing, or for forbearing to print, &c. any libel, any person so receiving or demanding, and every person who shall offer, pay, promise, or secure any money, &c. for printing, &c. any libel, shall be guilty of a high misdemeanor. The

Demanding, &c. reward for printing, or forbearing to print a libel, a high misdemeanor.

23 & 24 Geo. 3. c. 28. s. 3. Ir.

other clauses of this statute are superseded by the 38 Geo.

Geo. 3. c. 7. Ir. which enacts, that no person shall print,

38 Geo. 3. c. 7. s. 1. Ir.

or cause to be printed, publish, or cause to be published,

Persons who print, &c. any news-paper, &c. to give in to the next stamp officer an affidavit stating the names, &c. of proprietor, &c.

any news-paper, intelligencer, or occurrences, or any

paper serving the purposes of a newspaper, &c. before

he, and the proprietor of such newspaper, &c. shall have

first given in to the commissioners for managing the stamp

duties, or their proper officer in the respective towns,

and at their respective offices, an affidavit signed by him

or them, and sworn before one of the said commissioners

or officers, setting forth the true name of the proprietor

of such newspaper, &c. and of every person receiving

or sharing, or entitled to receive or share, the profits

thereof, together with the place of abode of every such

printer, publisher, or other person as aforesaid, and

also the true name of the person employed to conduct

the manual printing thereof, and also setting forth the

place where such newspaper, &c. is to be printed; and

until he shall, together with two, three, or four sufficient

Recognizance to be entered into for payment of fines, &c.

securities, have entered into recognizance before one

of the barons of the exchequer, if the paper is to be

printed in Dublin, or a bond, if the paper is to be print-

ed

ed elsewhere, to the king, (every printer, publisher, and proprietor in the sum of £500. and the sureties in a like sum) conditioned that such printer, &c. shall pay unto the king all such fines or penalties as shall be imposed upon him, under any conviction for printing or publish-

Like affidavit to be made, &c. as often as property or abode changed.

Affidavit conclusive evidence of matters therein.

Proprietors, &c. to be considered such, until notice of their ceasing so to be.

Penalty for printing, &c. without performing requisites.

s. 2.

s. 3.

Printers, &c. whether for themselves, or in trust for others, to perform requisites.

ing any traitorous, seditious, or slanderous libel; which affidavit, or an affidavit of the like import, shall be made, &c. in like manner, so often as the property in any such news-paper, &c. shall be altered, and as often as such printer, &c. shall change his place of abode or printing office, and as often as the person conducting the printing of such newspaper, &c. shall be changed; which affidavit shall remain with such commissioners or officers, to be produced as occasion may require, at or before the trial of all such actions, or prosecutions, &c. as shall be commenced touching such newspaper, or any publication therein contained; and such affidavit shall be received in all courts of justice, as conclusive evidence of all such matters therein, as are required to be therein contained, against every person who shall have signed and sworn the same as aforesaid, on the trial of any such action, &c.; and the proprietor, printer, or publisher, who shall have made such affidavit, shall be considered, to all intents, as the printer and publisher thereof, until he shall have given due notice of his having ceased to be so, to the commissioners of stamp duties. And by s. 2. every person who shall print, &c. such newspaper, &c. without first giving in to the said commissioners, or other officers, such affidavit, or without entering into such recognizance with such security as aforesaid, shall, for every day, forfeit £100.; one moiety thereof to the king, and the other to such person as shall inform and sue for the same, by action or information in any court of record, or by civil bill, and shall be disqualified from receiving stamped paper for the printing any newspaper, &c. By s. 3. every printer, proprietor, or publisher, whether for himself, or in trust for any bankrupt or lunatic, shall, as often as the said commissioners, or any 2 of them, shall see reasonable ground for requiring the same, and by notice in writing (to be served upon any person, or posted up at the place where the affidavit hereby

hereby required to be made shall state the said paper to be printed) require the same, within 10 days after being so required, give into the said commissioners, at their head office, or to their proper officers, in the respective towns, and at the respective offices where stamped paper shall be distributed, in the district where such paper shall be printed, &c. nearest to the place where such paper shall be printed, &c. such affidavit and of such import as printers, &c. are or shall by law be directed to make; which affidavit shall remain with such commissioners, &c. to be produced as occasion may require, at or before the trial of all such prosecutions, &c. as shall be commenced touching such newspaper, or any publication therein contained; and such affidavit shall be received in all courts of justice, as conclusive evidence of all such matters therein, as are hereby, or by any other act shall be required to be therein contained, against every person who shall have signed and sworn the same, on the trial of any such information or indictment, and every printer, &c. whether for himself, or in trust for any bankrupt or lunatic, who shall, when required thereto as aforesaid, omit to give in to the said commissioners, &c. within the time, and at the places aforesaid, such affidavit or recognizance as aforesaid, shall for every such neglect forfeit £100. to be recovered by any person who shall sue for the same by action, or information, in any court of record, (or by civil bill at the sessions of the county of Dublin, or before the recorder of the city of Dublin,) or at the assizes in such county where the printer, &c. shall reside; and shall be disqualified from printing or publishing any newspaper, &c. By s. 4. service at the house or place where any newspaper, &c. shall be printed or published, of any legal process, notice, summons, or *subpæna*, of or from any court, or to enforce an appearance in any suit or prosecution, to be commenced against any printer, &c. for any penalty, forfeiture, misdemeanor or crime, to be incurred or committed under or against this act, or any act now in force, or to be enacted in this kingdom, for securing the liberty of the press, shall be declared

Penalty for neglect.

s. 4.

In proceedings for such offences what service of process deemed sufficient.

*Civil bill where
sued out.*

s. 5.

*Lunatics, bank-
rupts, outlaws,
&c. disqualified
from printing,
&c.*

s. 6.

*Where news-
papers, &c. are
printed in places
not specified in
affidavit, who
deemed printers,
&c.*

clared to be good service of such process, &c.; and every printer, &c. may be sued or prosecuted by civil bill, within the jurisdiction where such newspaper, &c. shall be printed, for any offence, penalty, or forfeiture, committed or incurred against this act, although such person shall have quitted the same, and should not then reside there. By s. 5. if any printer, &c. of any newspaper, &c. shall have become, and be found a lunatic, or *non compos mentis*, or shall become and be found bankrupt, or shall be outlawed for any crime, or shall be found guilty, and receive judgment for printing or publishing any traitorous, scandalous, false, or seditious libel, or shall be charged, by indictment or information, with having published a traitorous, &c. libel, and shall not, within 6 days after a copy of such indictment, &c. shall be served upon such printer, &c. or at the house or place of printing or publishing the paper containing such libel, surrender himself to take his trial at the next commission of *oyer and terminer*, quarter sessions of the peace, or assizes for the city or county where he shall be indicted as aforesaid, or where such information is to be tried, every printer, &c. so neglecting shall be disabled to be the printer, publisher, or proprietor of any news-paper, &c.; and the commissioners of stamp duties shall not deliver to such person stamped paper for printing a news-paper. By s. 6. if any newspaper, &c. shall be printed at any place, other than the place specified in such affidavit as aforesaid, the possessor or occupier of any chamber in any house in which the same shall be printed, and the owner of the presses and types, or any of them, by which the same shall be printed, shall be considered in all suits and prosecutions, the printers and publishers of such newspaper, &c. and shall be liable to all such penalties and disabilities as the printers, &c. of such news-paper are or shall be liable to by this or any other act; and shall also be subject to a penalty of £500. and to a forfeiture of all printing materials to be found in such house, and such penalty may be recovered by any person who shall sue for the same by action or information in any court of record, or by

by civil bill in the proper jurisdiction. By s. 7. it shall be lawful for any chief magistrate in any town corporate, or any magistrate in any other town or place, within this kingdom, upon satisfactory affidavit of a credible person sworn before a magistrate, stating that a newspaper has been printed, or is printing, without having the requisites aforesaid performed, and stating that he has reason to believe that such newspaper, &c. was or is printed or printing in any place specified, to issue his warrant to any person to search for and seize upon the printing press, and all printing materials so used, and to cause the same to be lodged in some secure place, until the suit for such penalty shall be determined; and if the party to be sued for such penalty shall be thereof convicted, to cause such printing materials to be destroyed. Provided (s. 8.) that if such penalty shall not be sued for with due diligence, or if judgment shall be against the person suing for the same, the printing presses and types shall be restored to the owner thereof; and he shall have his action of damages against the person upon whose information the same was seized, unless the judge before whom the penalty shall be sued, certify that there was reasonable ground for the information. By s. 9. it shall be lawful for any of the commissioners of stamp duties, or for such other officer by them appointed for the distribution of stamped paper as aforesaid, to take such affidavits as aforesaid, which affidavits shall be taken without fee; and if any person shall wilfully swear any such affidavit, and that the same shall contain a falsehood, such person swearing such affidavit shall incur the penalties of wilful and corrupt perjury. By s. 10. no officer appointed for distributing stamps, shall sell or deliver any stamped paper for printing any newspaper, &c. to any person, until the requisites aforesaid shall have been first performed, upon pain of forfeiting his office, and being incapable for ever of serving therein. By s. 11. in case any person shall sell, hawk, carry about, utter, or expose to sale, any newspaper, or any book, pamphlet, or paper deemed to be a newspaper, within the meaning of any act of parliament relating to the

s. 7.

Magistrates may search for and seize presses and materials, when requisites not performed.

s. 8.

Provide.

s. 9.

Information in such cases how sworn.

s. 10.

Penalty for delivering stamps to persons who have not performed requisites.

s. 11.

Penalty for selling, &c. papers not legally stamped.

the

the stamp duties, not being stamped as by any such act shall be directed, it shall be lawful for any justice of peace to commit such offender, being convicted by his confession, or by the oath of one witness, or upon the view, to any gaol within his jurisdiction, for any time not exceeding 3 months, nor less than one week, unless he shall discover the person who printed the same, or the person from whom he received the said news-paper, &c.; and it shall be lawful for any person to seize and carry before any justice of peace of the county, &c. where such offence shall be committed, any person so offending. By s. 12. upon all trials of informations, indictments, or actions, for the printing or publication of libels, any news paper, &c. of the same title as that for which the prisoner, traverser, or defendant shall be registered at the stamp office, as printer, &c. shall be sufficient evidence to go to the jury, that such paper was printed and published by such person so registered, and to prove the fact of printing and publishing the same, unless such defendant shall shew to the satisfaction of the jury, that such paper was not printed or published by him. By s. 13. it shall be lawful for the several grand juries within this kingdom, to present any newspaper, &c. in which publications of a seditious nature shall have been printed in their respective counties, as a public and common nuisance; and if such presentment shall not be traversed, or if traversed, and a verdict shall be given for such presentment, then the sheriff of such county, &c. shall abate such nuisance, by seizing the printing presses, utensils, types, papers, and materials, used or intended to be used in printing such newspaper; and such printers and proprietors shall from thenceforth be disqualified from being the printers or proprietors of any public news-paper. Provided (s. 14.) that it shall be lawful for any printer or proprietor of such news-paper so presented, to traverse such presentment in the same term, assizes, or sessions, at which the same shall be found: Provided also that if the trial of the said traverse shall be put off by the court, upon the application of the traverser, until a subsequent term, &c. then

s. 12.

Any paper of the same title as that registered, evidence in actions, &c. for libels.

s. 13.

Grand juries may present papers as nuisances.

s. 14.

Printers, &c. may traverse such presentments.

then such traverser shall enter into sufficient recognizance, that such news-paper shall not be printed in the mean time. And by s. 15. a notice in writing stating that the grand jury of such county, &c. will be applied to, to present such news-paper as aforesaid, shall be served on some person in the office, or posted on the door of the office where such paper shall be printed or published, 8 days before said presentment shall be found. By s. 16. nothing in this act shall extend to the Dublin Gazette, or to the printer, publisher, or proprietor of the same.

s. 15.

*Notice required
of application
for presentment.*

s. 16.

*Proviso as to
Dublin Gazette.*

CHAP. IX.

Of Offences against Public Trade.

WITH respect to the offence of *owling*: The 28 Geo. 3. c. 38. Eng. has explained, amended, and reduced into one act of parliament the several laws for preventing the exportation of live sheep, rams, and lambs, wool, woolfels, &c.; and contains a variety of regulations and restrictions upon the subject, and imposing divers pecuniary penalties and forfeitures for the breach of them. But this statute is one of the great number respecting trade and manufacture, and importation and exportation, which it is beside the purpose of this work to detail: I shall therefore content myself with stating the following clauses of this act. By s. 56. if any person putting this act in execution, shall be hindered, opposed, obstructed, molested, wounded, or beaten, in seizing or attempting to seize, any sheep, wool, woolfels, &c. by any person, either in the day or night, by land or water, which were intended to be exported, or which were carrying on board any ship or vessel contrary to this act, the person

§ 1.

*Persons oppos-
ing any one in
the execution of
this act against
the unlawful
exportation of
sheep, wool, &c.
to be transport-
ed for 7 years.*28 Geo. 3. c. 38.
s. 56. Eng.

who

who shall so hinder, &c. the person so making or attempting to make such seizure, and every person being armed with offensive arms or weapons, or wearing any vizard, mask, or other disguise, who shall rescue or attempt to rescue any sheep, &c. which shall have been seized according to the directions of this act, such offenders shall be transported for 7 years; and if any such offender shall return into Great Britain before the expiration of the time for which he shall be so transported, he shall be guilty of felony without benefit of clergy. Provided (s. 77.) that no person shall be liable to be prosecuted for any offence contrary to this act, unless such prosecution shall be commenced within 3 years after the offence. Certain felonies were also created by the 11 Eliz. st. 3. c. 10. Ir. and 13 Eliz. c. 2. Ir. in respect to the exportation of wool amongst other articles, with a view to the custom or revenue arising from its export. But these statutes are now obsolete, or superseded. And wool not being the staple commodity of Ireland, no statute similar to the 28 Geo. 3. c. 38. *supra*, has been enacted in this country.

§ 2.

Persons armed or disguised assembled to the number of 3 for the purpose of smuggling, &c. guilty capitally.
19Geo.2. c. 34.
s. 1. Eng.

II. Those branches of the revenue laws, which impose divers pecuniary penalties and forfeitures for restraining the offence of clandestine *smuggling*, do not fall within the scope of this work; but the following clauses which relate to such acts of smuggling, as are of the nature of offences against the public peace, are proper to be here stated. By the 19 Geo. 2. c. 34. Eng. if any persons to the number of three, armed with fire-arms or other weapons, shall be assembled in order to be aiding and assisting in the illegal exportation of goods prohibited to be exported, or the carrying of such goods in order to such exportation, or in the running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay any duties which have not been paid or secured; or in the illegal relanding of any goods which have been shipped or exported upon debenture or certificate; or in rescuing or taking away the same, after seizure, from any officer of the customs or excise, or other his majesty's revenue, or other person employed by

by him, or from the place where they shall be lodged by him; or in rescuing any person who shall be apprehended for any of the offences made felony by this or any other act, relating to the revenues of customs or excise; or in preventing the apprehending any person who shall be guilty of any such offence; or in case any persons to the number of three, so armed as aforesaid, shall be so aiding or assisting, or if any person shall have his face blacked, or wear any vizard, mask, or other disguise, when passing with such goods, or shall forcibly hinder, obstruct, assault, oppose or resist any of the officers of the customs or excise, or other his majesty's revenue, in the seizing or securing such goods; or if any person shall maim or dangerously wound any officer of the revenue, in his attempting to go on board any ship or vessel within the limits of any port of this kingdom, or shoot at, maim, or dangerously wound him when on board such vessel, and in the due execution of his office, such offender shall be guilty of felony without benefit of clergy; and every person who shall be convicted of any of the said offences within Scotland, shall incur the pains of death, and confiscation of moveables.

So persons aiding them, or opposing officers of the revenue in seizing goods, or going on board ship, &c.

By s. 2. if any person shall be charged with being guilty of any of the offences aforesaid, before a justice of peace, or before a justice of the court of king's bench, if the offence be committed in England; or before the lord justice general, or one of the lords of justiciary, or a justice of peace, in Scotland, if the offence be committed in Scotland; by information of a credible person upon oath, by him to be subscribed, such justice of peace, &c. before whom such information shall be made, shall forthwith certify under his hand and seal, and return such information to one of the principal secretaries of state, who shall lay the same before the king in council; whereupon it shall be lawful for the king to make his order in his privy council, requiring such offender to surrender himself, within 40 days after the first publication thereof in the London Gazette, to the lord chief justice, or any other justice of the king's bench, or to any of his majesty's justices of peace, if the offence be committed

s. 2.

Such offenders how proclaimed, and required to surrender.

*Persons not
surrendering,
attainted of fe-
lony, and execu-
tion awarded.*

s. 3.

*Persons har-
bouring, &c.
such proclaimed
persons, guilty,
capitally.*

in England; or to any of the lords of justiciary, or a justice of peace in Scotland, if the offence be committed in Scotland; who shall, upon such offender surrendering himself, commit him to the county gaol, or to the prison of the place where he shall so surrender, that he may be forth-coming to answer the charge; which order the clerks of the privy council shall cause to be forthwith published in the 2 successive London Gazettes, and to be forthwith transmitted to the sheriff of the county where the offence shall be committed, who shall, within 14 days after the receipt thereof, cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market-places, upon the respective market days, of 2 market towns in the same county, near to the place where such offence shall have been committed; and a true copy of such order shall be affixed upon some public place in such market towns; and in case such offender shall not surrender himself pursuant to such order of the king in council, he so neglecting or refusing, or escaping after such surrender, shall, from the day appointed for his surrender, be deemed convicted and attainted of felony, as in cases of a person attainted by verdict and judgment, if the offence be charged to have been committed in England; and shall be deemed to be convicted of a capital crime, and shall suffer death and confiscation of moveables, if the offence be charged to have been committed in Scotland; and it shall be lawful for the court of king's bench, justices of *oyer and terminer*, or general gaol delivery, for the county or place where such person shall be, to award execution against such offender, in such manner as if he had been convicted in said courts respectively, if the offence be charged to have been committed in England; and it shall be lawful for the court of justiciary, or the lords of justiciary, in their circuits, to award execution against such offenders, as if they had been found guilty in said court of justiciary, &c. By s. 3. every person who shall, after the time so appointed for surrender shall be expired, harbour, receive, conceal, aid, abet, or succour such person, knowing him to have been so charged, and

to have been required to surrender, and not to have surrendered pursuant to such order, being prosecuted for the same within one year after the offence committed, shall be guilty of felony, and be transported for 7 years, in the same manner as felons by the 4 Geo. 1. c. 11. and 6 Geo. 1. c. 23.; and if any such offender shall return into Great Britain or Ireland, before the expiration of said term, he shall suffer as a person attainted of felony, without benefit of clergy. Provided (s. 4.) that nothing herein shall prevent any justice, justice of peace, magistrate, officer, or minister of justice, from apprehending and securing such offender, against whom such information shall be given, and for requiring whose surrender such order in council shall be made, by the ordinary course of law. By s. 5. every offence hereby made felony, shall be inquired of, &c. in any county within England, as if therein committed. Provided that no attainder for any of the offences made felony by this act, shall work any corruption of blood, loss of dower, or forfeiture of lands or tenements. By s. 6. if any officer of the revenue, or other person employed in the seizing, conveying, or securing any goods forfeited on account of their being prohibited or uncustomed goods, or on account of the duties chargeable thereon not having been paid or secured, or by virtue of any law made to prevent the exportation of wool or other goods, or in endeavouring to apprehend any offender against this act, shall be beat, wounded, maimed, or killed by any offender against this act; or the said goods so seized shall be rescued by persons so armed as aforesaid; in such cases the inhabitants of every rape or lath in such counties as are divided into rapes or laths, and in every county the inhabitants of every hundred where such facts shall be committed, within England, shall make full satisfaction for the damages which such officers or persons shall suffer by such beating, wounding, and maiming, and by the loss of such goods so seized and rescued, and shall also pay £100. for each person so killed, to the executors, &c. of such officer or person so killed; and such officers or persons, their executors, &c. shall be enabled

s. 4.

Proviso as to proceedings by ordinary course of law.

s. 5.

*Offences where tried.**Attainder not to corrupt blood.*

s. 6.

*If officers wounded, or goods rescued, county to make good the damages.**To what amount.*

to sue for such damages, (so as the sum to be recovered for such beating, wounding, or maiming, shall not exceed £40. nor for the loss of goods, £200.) against the inhabitants of such rape or lath, or hundred; and if such person shall recover in such action, all the inhabitants of such rape, &c. shall be ratably taxed and assessed towards payment of the damages and costs to be recovered by the plaintiff in any action to be brought upon this act, and also all necessary expenses in defending such action; which taxation and assessment shall be made, levied and paid, in the manner prescribed in cases of robberies by the 8 Geo. 2. c. 16. and by so much of any former law relating to actions against hundreds in cases of robberies, as is not repealed or altered by said act; and if any plaintiff in any action to be brought upon this act, shall be nonsuited, or shall discontinue his action, or if judgment on demurrer or verdict shall be given against him, the charges necessarily expended in defending such action, over and above the costs in those cases to be taxed, and also the taxed costs in case the plaintiff be insolvent, shall be levied and paid in such manner, as in the like cases such charges and costs in actions brought upon the said act are directed to be levied and paid; and every action to be brought upon this act shall be prosecuted in like manner as actions upon the 8 Geo. 2. c. 16. Provided (s. 7.) that no person shall recover any damages by virtue of this act, for any beating, wounding, maiming, or loss of goods, unless he shall, within 4 days after such damage or injury, cause notice to be given of such offence being committed, unto 2 of the inhabitants of some town, village, or hamlet, near to the place where such fact shall have been committed, and shall, within 8 days after such fact, declare by examination upon oath, before some justice of peace of the county, liberty, or division where the same was committed, (which examination every such justice shall be obliged to take,) whether he know the persons who committed such fact, or any of them; and if upon such examination it be declared that he know any of them, he shall be bound by recognizance to prosecute such offender;

How levied.

Costs to be also levied.

s. 7.

Notice, examination, and recognizance required.

offender; and no such person shall recover any damages by virtue of this act, unless he shall, besides the said notice and recognizance, give such notice, and enter into such recognizance, as persons robbed are by the 8 Geo. 2. c. 16. directed to give and enter into. Provided (s. 8.)

s. 8.

that where any offender shall be convicted of such offence within 6 calendar months after the offence committed, no hundred, rape or lath, or any inhabitant thereof, shall be subject to make any satisfaction for such damages, or to pay said £100. to the executors, &c. of such killed person. And by s. 9. no person shall

No satisfaction if offender convicted in 6 months.

s. 9.

be entitled to bring any action against the inhabitants of any hundred, &c. for any of the matters aforesaid, unless the same shall be commenced within one year after the offence committed. By s. 10. every person who

Limitation for actions.

s. 10.

shall apprehend, or discover so that he may be taken, any person in England so advertised, who shall not have surrendered himself within 40 days as aforesaid, and cause him to be brought before the chief justice of

Rewards for apprehending, &c. persons not surrendering.

the king's bench, or one of the justices of said court, or one of his majesty's justices of peace for London or Middlesex, (who is hereby required to commit such person to Newgate for such felony,) shall receive for every person so apprehended, £500. to be paid within one month after execution shall be awarded against such offender, by the commissioners of the customs or excise, who are required to receive the applications of all such as are concerned in the discovering, &c. such offenders, and determine who are entitled to the reward; and the same shall be divided as to the commissioners, or the major part of them, shall seem reasonable; and if any such offender against whom no order in council shall be made,

Offenders discovering others, to be acquitted.

shall discover or apprehend any other offender against whom such order shall have been made, he shall be acquitted of his own offence, and all other like offences then before committed, and for which no prosecution shall have been then commenced, and shall also have his share of the reward; and if any person shall lose a limb, or an eye, or be otherwise grievously maimed or wounded in the apprehending, or endeavouring to apprehend,

Amends in cases of persons wounded or killed in apprehending offenders.

hend,

hend, or making pursuit after such offender, he shall, upon application to the commissioners of customs or excise respectively, receive £50. above any other reward that he may be entitled to as an apprehender by virtue of this act; and in case any person shall be killed in the apprehending, &c. any such offender, then the executors, &c. of such person, upon application to the commissioners of customs or excise, and laying sufficient proof before them of such person being killed as aforesaid, shall receive £100.; which rewards shall be paid by the receiver general of the customs, or cashier of the excise, upon an order directed to them by the commissioners of customs or excise. By s. 11. if any of the said offenders, at any time before his majesty's order in council shall be made requiring him to surrender within 40 days as aforesaid, shall discover 2 accomplices, to the commissioners of the customs or excise in England, so as that they shall be convicted of such offence, he shall receive £50. for every offender so discovered and convicted, and shall be discharged of such offence, and all other like offences then before committed, for which no prosecution shall have been then commenced; which reward shall be paid as the reward for apprehending. By s. 12. nothing in this act shall restrain the court of king's bench, or any of the judges thereof, or the court of justiciary in Scotland, or any of the judges thereof, from bailing any person committed for felony by virtue of this act, as in other cases of felony.

s. 11.

Reward for offenders discovering accomplices.

s. 12.

Proviso for bail.

Persons obstructing officers of customs or excise, in seizing goods, or rescuing goods, or damaging casks, &c. how dealt with.

1^o Geo. 3. c. 69. s. 10. Eng.

By the 19 Geo. 3. c. 69. s. 10. Eng. if any person shall assault, or resist, &c. any officer of the customs or excise in due seizing or securing any goods liable to be seized by this or any act now in force; or shall by force or violence rescue, or cause to be rescued, any of the said goods, after the same shall have been seized by such officer, or shall attempt so to do; or after such seizure, shall cut, stave, break, or otherwise destroy or damage any casks, vessels, boxes, or package, wherein the same shall be contained; it shall be lawful for the officers of customs and excise, and all persons acting in their aid and assistance, to stop, arrest, and detain every

every person so offending, and him forthwith to convey before a justice of peace, near to the place where the offence shall be committed; and the justice shall, if he see cause, commit the person so brought before him to the next county gaol, until the next general quarter sessions of the peace for such county, &c. And by s. 11. s. 11.
 the officer who shall convey any offender before any justice of peace as aforesaid, shall, in case such offender *Recognizance to prosecute.*
 shall be committed to the county gaol, enter into a recognizance to the king, before such justice, in the sum of £40. conditioned to appear at such quarter sessions of the peace, and to prosecute the person so committed; and the commissioners of customs and excise shall order the charges of such prosecution to be paid out of any money in the hands of the receiver-general of the customs and excise. By s. 12. when any person shall be s. 12.
 committed for any offence against this act, to any county gaol until the next quarter sessions as aforesaid, the justices at such sessions shall try such offence; and if such person shall be duly convicted, said justices at such sessions, in lieu of any other punishment to which such offender might be liable for the same offence by any former act, shall commit such person to hard labour in the house of correction of the county, &c. for a term not exceeding 3 years, nor less than one year. Provided (s. 13.) that if any person so convicted shall be approved s. 13.
 by any officer of his majesty's land forces or fleet, as an able and proper person to serve his majesty, said justices, *Such convicts may be sent to serve the king by land or sea.*
 at such quarter sessions, shall, in lieu of any other punishment, adjudge such offender to serve his majesty as a soldier or sailor, and cause such man to be delivered over to such officer, such officer giving a receipt under his hand acknowledging what men are so delivered to him; and such officer may detain such men in some secure place, and no person so delivered shall be taken out of his majesty's service by any process, other than for some criminal matter. By s. 14. if the said justices s. 14.
 in their sessions shall not be attended, at the time of convicting such offender, by some proper officer of his majesty's land forces or fleet, it shall be lawful for said *Adjournment of sessions to procure attendance of officer to receive prisoners.*
 justices

s. 15.

Gaolers and parish officers, how punishable for their defaults.

s. 16.

Persons adjudged to serve his majesty under this act, when deemed to be enlisted, and subject to articles of war.

Names, &c. of men so enlisted, to be transmitted to war office, or admiralty office.

justices to adjourn to some convenient day, and to give directions for securing such offender, and to cause notice to be given to any such officer of the day and place of such adjournment; and such officer shall attend, or appoint some other person to attend the said justices at such adjournment, and receive such persons, in case such officer shall approve of such persons as able and proper to serve his majesty. By s. 15. it shall be lawful for said justices to impose upon any gaoler, or keeper of any house of correction, or of any prison, who shall suffer any person, committed to his custody in pursuance of this act, to escape, or upon any constable, headborough, tithingman, parish or town officer, for every wilful neglect or default in the execution of any warrant, order, or precept to them directed, a fine not exceeding £10. to be levied by distress and sale of goods, and to pay said fine to the informer. By s. 16. the justices shall cause the 2nd and 6th sections of the articles of war against mutiny and desertion to be read to the person so delivered, in the presence of the justices, and said justices shall tender to such person the oath mentioned in the 3rd section of said articles of war; and said justices shall, forthwith certify under their hands, that such person is ordered and adjudged to serve his majesty, setting forth the name, age, parish, and last place of abode of him, if known, and that the 2nd and 6th articles of war were read to him, and that he had taken the oath mentioned in said articles, or had refused to take said oath; and shall deliver said certificate, together with such man, to the officer or person appointed to receive him, and such man shall thereupon be deemed to be enlisted, and may be proceeded against as if he had taken the said oath according to the articles of war; and the justices shall also, forthwith, cause an entry or memorial to be made in a book to be kept by them, or by the clerk of the peace of the county, for that purpose, of the names of the men so delivered, the ages, parishes, and places of their last abode, if they can be known, and of the time and place when and where such men were delivered to the said officers, &c. and the names of the said officers, &c. who received

received them, and for what regiment, or company, or ship, they were so received; and shall cause true copies or duplicates of such entries, attested by the said justices or the clerk of the peace, within 40 days after the delivering such men, to be transmitted into the office of the secretary at war, or into the office of the commissioners for executing the office of lord high admiral. By s. 17.

s. 17.

no person who shall be ordered to serve his majesty as a soldier or sailor by virtue of this act, and shall have been approved of as aforesaid, shall, during the term of

Persons so enlisted, not to be discharged, &c. for 5 years.

5 years, unless disabled within that time by unavoidable accident, or bodily infirmity, be discharged from his majesty's service; and any officer of his majesty's land forces, marines, or sea service, who shall, knowingly and wilfully, discharge any person so delivered over as aforesaid, by false muster or certificate, or in consideration of any gratuity, or by any other collusive means, permit any such person to avoid the actual service hereby intended, shall be cashiered. By s. 33. no person who shall be prosecuted or punished by any of the provisions in this act, shall be prosecuted, &c. for the same by any other act. And by s. 35. if any person shall be sued or prosecuted for any thing by him done by colour of this act, such action, &c. shall be commenced within 3 months, and such person may plead the general issue, &c. and such defendant shall have treble costs of nonsuit, discontinuance, or judgment upon verdict or demurrer.

s. 33.

Proviso.

s. 35.

*Limitation.**Pleading.**Costs.*

By the 24 Geo. 3. c. 47. s. 11. Eng. if any person upon the shore, or on board any ship, vessel, or boat, shall maliciously shoot at or upon any ship, vessel, or boat belonging to his majesty's navy, or in the service of the customs or excise, within the limits of any port, harbour, or creek of Great Britain, or within 4

Maliciously shooting at any ship, &c. or officer of the navy, customs or excise, a capital felony.

24 Geo. 3. c. 47. s. 11. Eng.

leagues from any part of the coast thereof; or shall maliciously shoot at, maim, or dangerously wound any officer of his majesty's navy, or of the customs or excise, whether attempting to go on board, or being on board, or returning from on board any ship, &c. or otherwise acting in the due execution of his duty on shore, or within the limits of any port, &c. of Great Britain, or within

s. 12.

How such offenders shall be proclaimed, and required to surrender.

within 4 leagues of any part of the coast thereof; or shall maliciously shoot at, maim, or dangerously wound, any person aiding or assisting such officer in the execution of his duty; every person so offending, or aiding, abetting, or assisting therein, shall be guilty of felony without benefit of clergy. And by s. 12. if any person shall be charged with any of the offences made felony by this act, before a justice of peace, or one of the justices of the court of king's bench, if the offence be committed in England or Wales, or within the limits of any of the ports thereof, or within 4 leagues of the coast thereof; or before one of the lords of justiciary, or judge of the high court of admiralty, or any judge ordinary, or judge admiral, deputy, or substitute, in Scotland, if the offence be committed in Scotland, or within the limits of any port of Scotland, or within 4 leagues of the coast thereof; by information of a credible person upon oath, by him to be subscribed; such justice of peace, justice of K. B. lord of justiciary, judge of the high court of admiralty, judge ordinary, or judge admiral, deputy or substitute, before whom such information shall be made, shall forthwith certify, under his hand and seal, and return such information to one of the principal secretaries of state, who shall lay the same before the king in council; whereupon it shall be lawful for the king to make his order in said privy council, requiring such offender to surrender himself within 40 days after the first publication thereof in the London Gazette, to the lord chief justice, or any other of the justices of the court of K. B. or to any justice of peace, if the offence be committed within England, &c. or to any of the lords of justiciary, or judge of the high court of admiralty, or judge ordinary, judge admiral, deputy or substitute, if the offence be committed within Scotland, &c. who shall, upon such offender surrendering himself, commit him to the common gaol, or to the prison of the place where he shall so surrender, that he may be forthcoming to answer the offence; which order the clerks of the privy council shall cause to be printed or published in the 2 successive London Gazettes, and to be transmitted to the sheriff of the county where

where the offence shall be committed, if the same shall be committed in any county; and if the offence shall not be committed within any county, but within the limits of any port as aforesaid, or within 4 leagues of the coast of any part of Great Britain, to be transmitted to the sheriff of any county near to the place where such offence shall be committed, which respective sheriff shall, within 14 days after the receipt thereof, cause the same to be proclaimed between the hours of ten in the morning, and two in the afternoon, in the market-place, upon the respective market-days of 2 market towns, in the same county, near to the place where the offence shall be committed; and a true copy of such order shall be affixed upon some public place in such market towns: And such offender, in case of neglecting or refusing to surrender himself pursuant to such order in council, or escaping after surrender, shall, from the day appointed for his surrender, be deemed convicted and attainted of felony, and shall suffer death without benefit of clergy, if the offence be charged to be committed within England, &c. and shall be deemed to be convicted of a capital crime, and shall suffer death and confiscation of moveables, if the offence be charged to be committed within Scotland, &c.; and it shall be lawful for the court of K. B. or justices of *oyer and terminer*, or general gaol delivery, or great session for the county or place where such person shall be, to award execution against such offender, if the offence be charged to have been committed within England, &c. and it shall be lawful for the court of justiciary, or the lords of justiciary, in their circuits, or judge of the high court of admiralty, to award execution against such offenders, if the offence shall be charged to have been committed within Scotland, &c. By s. 13. every person who shall, after the time appointed for the surrender of any person so charged upon oath with any of the offences aforesaid shall be expired, harbour, receive, conceal, and abet, or succour such person, knowing him to have been so charged, and to have been required to surrender himself by such order, and not to have surrendered himself, being prosecuted

Persons not surrendering attainted of felony, and execution awarded.

s. 13.

Persons harbouring such offenders, to be transported for 7 years.

s. 14.

Proviso as to not preventing the apprehending such offenders by the ordinary course of law.

secuted for the same within one year after the offence committed, shall be guilty of felony, and shall be transported for 7 years; and if any such offender shall be found at large within Great Britain before the expiration of said term, he shall suffer as persons attainted of felony without benefit of clergy. Provided (s. 14) that nothing herein shall prevent any judge, justice of peace, or officer of justice, from apprehending such offender, against whom such information shall be given, and for requiring whose surrender such order in council shall be made; and in case such offender shall be taken and secured before the time shall be expired within which he shall be required to surrender himself by such order in council, then no further proceedings shall be had upon such order in council, but he shall be brought to trial by due course of law. By s. 15. if any officer of his ma-

s. 15.

Persons obstructing officers of the navy, &c. in execution of their duty, how dealt with.

jesty's navy, or in the service of the customs or excise, being on shore, or going on board any ship, &c. within the limits of any of the ports of this kingdom, or within 4 leagues from the coasts thereof, shall be hindered, opposed, obstructed, or assaulted, in the due execution of his office, by any person, either in the day-time or night; every person so hindering, &c. and all such as shall act in his aid or assistance, shall be carried before a justice of peace residing near to the place where such offence shall be committed; and such justice shall, if he see cause, commit such person to the next county gaol, until the next court of *oyer and terminer*, great session, or gaol delivery, or until such person shall be delivered by due course of law; and in case an indictment shall be found against him, he shall plead thereto, without having time to traverse the same, as is usual in cases of misdemeanors; and being convicted shall be sentenced to hard labour on the river Thames, or other navigable river in England, for any term not exceeding 3 years, as directed by the 19 Geo. 3. c. 74. Eng. for the punishment of persons convicted of grand larceny; or such court may order such offender to be committed to the common gaol, or house of correction, for any term not exceeding 3 years. Provided (s. 16.) that in

s. 16.

case

case any person shall be brought before any justice of peace, being charged with having hindered, &c. any officer of the navy, customs or excise, contrary to this act, and it shall appear that the offence falls within the provisions of the 19 Geo. 3. c. 69. Eng. (*ante* p. 678.) it shall be lawful for such justice, if he thinks fit, instead of proceeding according to the provisions of this act, to commit such offender to the county gaol until the next quarter-sessions of the peace; and in that case every such offender shall be tried and punished as by the 19 Geo. 3. c. 69. is directed. By s. 17. every such offence, in case the same shall be committed within England, Wales, or Berwick, or within the limits of any of the ports thereof, or within 4 leagues of any part of the coasts thereof, shall be inquired of, &c. before any court of *oyer and terminer*, great session, or gaol delivery, in any county within England or Wales, as if the same had been committed within such county. And by s. 18. in case any offence, which by this act is declared to be a felony or misdemeanor, shall be committed in Scotland, or within the limits of any port thereof, or within 4 leagues of the coasts of the same, information of such offence may be given to any justice of peace, judge ordinary or judge admiral, deputy or substitute, residing nearest the place where such offence may have been committed; who, if he shall see cause, shall grant a warrant for committing such person to the common gaol of the county, &c. until he is liberated in due course of law; and such person shall be tried before the court of justiciary or circuit courts, or before the judge of the high court of admiralty at Edinburgh; or in case the offence be only such as is punishable by hard labour or imprisonment, the same may be tried before the judge ordinary of the county or place where the warrant was granted. By s. 19. where any person shall, by virtue of this act, be taken before a justice of peace, for any offence deemed a misdemeanor, such person shall in no case be admitted to bail, unless he shall first enter into a recognizance, with 2 sureties, to the king in £200. each, and the said sureties in £200. each, with condition that such person shall appear

Proviso as to offences falling within the provisions of the 19 Geo. 3. c. 69.

s. 17 & 18.

Offences where tried.

s. 19 & 20.

Recognizance required upon entering into bail for misdemeanors.

pear at the next court of *oyer and terminer*, general gaol delivery, or great sessions, to be holden for such county, for which such justice shall act, and answer and plead to any indictment which may be found at such court for such misdemeanor; and such recognizance shall, forthwith, be transmitted to the clerk of assize, or other proper officer of the court of *oyer and terminer*, gaol delivery, or great sessions, for such county. And by s. 20. where any such misdemeanor is committed in Scotland, or within the limits of any port thereof, or within 4 leagues of the same, the person accused thereof, and taken before any justice of peace or other judge competent in Scotland, shall not be admitted to bail, unless he enter into a recognizance, with 2 sureties, to the king in £200. and the sureties in £100. each, with condition that he shall stand his trial in the manner directed by this act, and according to the forms practised in that part of the kingdom.

Punishments for assaulting, resisting, or shooting at officers of army, navy, customs, or excise.

45 Geo 3. c. 121. s. 11. U. K.

By the 45 Geo. 3. c. 121. U. K. if any person shall by force or violence assault, resist, oppose, molest, obstruct, or hinder any officer of his majesty's army, navy, or marines, or any officer in the service of the customs or excise, or any person aiding or assisting in the due execution of the powers by this act given (for the prevention of smuggling spirits, wine, or tobacco,) such person shall be adjudged a felon, and shall be transported for 7 years, or sentenced to be imprisoned in any house of correction or common gaol, and kept to hard labour for any term not exceeding 3 years, at the discretion of the court; and if any person shall maliciously shoot at or upon any ship, vessel, or boat, belonging to the navy, or in the service of the customs or excise, in any part of the British or Irish channels, or elsewhere on the high seas, within 100 leagues of the coasts of Great Britain or Ireland; or if any person shall maliciously shoot at, maim, or dangerously wound any officer of the army, navy, or marines, or of the customs or excise; or any person aiding or assisting such officer, acting in the due execution of his duty under any of the powers of this act, every person so offending, and every person aiding,

aiding, abetting or assisting therein, shall be guilty of felony without benefit of clergy. And by s. 12. every offence made felony by this act, committed within any port, harbour, creek, haven, or roadstead of [*Guernsey, Jersey, Alderney, or Sark,] may be inquired of, &c. in the said islands, and every offence committed elsewhere out of the united kingdom, may be inquired of, &c. in any county of the united kingdom; and every such offence committed within England, Scotland, or Ireland, may be inquired of, &c. within any county of that part of the united kingdom in which such offence shall have been committed, as if committed in such county. And by s. 16. all powers, authorities, exemptions, and exceptions, and all privileges and protections as to maintaining or defending any suit or action, and pleading therein, or any costs in relation to any thing done by any officer of customs or excise, under this or any other act in force on and immediately before the passing of this act, for the protection of the revenues of customs and excise, or prevention of smuggling, and every clause relating to any ships, &c. made subject to forfeiture, or to any goods laden on board any such ship, &c. or any guns, furniture, ammunition, tackle, or apparel, or to any master or other person having or taking the charge or command, or any other person on board of such ship, &c. shall extend, and be used and exercised by all commissioned officers of his majesty's army, navy, and marines.

s. 12.

*Mode of trying offences.***Vide 48 Geo. 3. c. 84. s. 12. post.*

s. 16.

Powers of officers of customs and excise extended to commissioned officers of navy or army.

By the 47 Geo. 3. st. 2. c. 66. s. 34. U. K. no person shall after sun-set and before sun-rise, between the 21st. day of September, and 1st day of April, or after the hour of 8 in the evening, and before 6 in the morning, between the last day of March and 22d day of September, make, or aid or assist in the making, or be present at for the purpose of aiding or assisting in the making, any light, fire, flash, or blaze, or any signal by smoke, or by any rocket, fire-works, flags, firing of any gun or other fire-arms, or any other contrivance or device in or on board, or from any ship, vessel, or boat, or on or from any part of the coast or shores of Great Britain,

*Persons making signals to smugglers how dealt with.**47 Geo. 3 st. 2. c. 66. s. 34. U. K.*

Britain, or within 6 miles of any part of such coast or shores, for the purpose of making or giving any signal to any person on board any smuggling ship, &c. whether such person so on board of such ship, &c. be or be not within sight or distance to see or hear any such signal; and every such offender shall be guilty of a misdemeanor; and it shall be lawful for any officer of the customs or excise, or any other person, to arrest and detain, and carry such offender before a justice of peace residing near to the place where such offence shall be committed, who, if he see cause, shall commit the offender to the next county gaol, until the next court of *oyer and terminer*, great sessions, or gaol delivery, or until such person shall be delivered by due course of law; and in case an indictment shall be found, or information filed against him, he shall forthwith plead thereto, and be tried thereon, without having time to traverse the same as in cases of misdemeanors; and it shall not be necessary to prove that any ship, &c. was actually hovering or off the coast or shore, or within any limits mentioned in this or any act passed for the prevention of smuggling; and the offender shall either forfeit £100. or, at the discretion of the court, be sentenced to or be committed to the common gaol or house of correction, to be kept to hard labour for any term not exceeding one year. Provided (s. 35.) that in case any

s. 35.

*Burden of proof
upon whom cast.*

person be charged with having made or caused to be made; or been aiding or assisting in making, or been present for the purpose of so making, or aiding or assisting in making or giving, any such light, fire, flash, blaze, or signal as aforesaid, the burden of proof that such signal was not made with such intent, shall be upon the defendant. By s. 37. it shall be lawful for any person to put out and extinguish any such light, fire, or blaze, or any smoke, signal, rocket, fire-work, or other contrivance or device so made as aforesaid, and to enter upon any lands for that purpose. By s. 36. when any person

s. 37.

*Officers, &c.
may enter upon
lands to destroy
signals.*

s. 36.

*Persons apprehended
have bail-
ed.*

shall be taken before a justice of peace in Great Britain, for any offence against this act, or against the 42 Geo. 3. c. 82. and 45 Geo. 3. c. 121. such person shall in no case

case be admitted to bail, unless he shall first enter into a recognizance with 2 sureties to the king, in £200. and the sureties in £100. each, with condition that such person shall appear at the next court of *oyer and terminer*, general gaol delivery, or great-session, or general quarter-sessions of the peace; to be holden for the county or place where such offender shall be arrested, to answer and plead to any indictment for such misdemeanor; and such recognizance shall be, forthwith, transmitted to the clerk of assize, or other proper officer of the court of *oyer and terminer*, &c. or to the clerk of the peace for such county or place. By s. 42. in all cases where any

s. 42.

officer or seaman employed in the service of the customs or excise, shall be killed, maimed, or wounded, in the due execution of this act, or any other act relating to the customs or excise, or passed for the prevention of smuggling, it shall be lawful for the commissioners of customs and excise in England, Scotland, or Ireland, to make such provision for every such officer or seaman so maimed or wounded, or for the widows and families of such as shall be killed, as they shall be empowered to do by warrant from the lord high treasurer, or commissioners of the treasury. By s. 44. in all cases in

Officers and seamen in the service of the customs or excise, if wounded, or their families, if killed, to be provided for.

s. 44.

which any justices of peace are empowered to take cognizance of any offence, or of any forfeiture in this act, or in any act relating to the customs or excise, it shall be lawful for any justice of peace of the county, city, town, or place, within which the port or place into which any ship, vessel, boat, or goods, or any person, shall be taken, brought, or carried, under any act relating to the customs or excise, shall be situated, to take cognizance of such offence, or forfeiture, as if the same offence had been committed, or the same forfeiture incurred, on land within the jurisdictions of such justices.

Justices of peace empowered to take cognizance of offences upon the high seas.

And this act is amended by the 48 Geo. 3. c. 84. s. 8. 48 Geo. 3. c. 84.

U. K. which enacts, that in all cases in which the court

s. 8. U. K.

of king's bench, or any justices of *oyer and terminer* or gaol delivery, are empowered to take cognizance of any assault or obstruction of any officer of the customs or excise, army, navy, or marines, or of any felony or

Court of K. B. &c. may take cognizance of assaults or obstructions, &c. as if they had been committed on land.

other

other offence against, or of any forfeiture incurred under, any act of parliament in force, or to be made, relating to the customs or excise, it shall be lawful for said court of K. B. and for such justices of *oyer* and *terminer*, &c. for any county, city, town, or place, to take cognizance of such offences or forfeitures, [*committed or arising on the high seas,] as if the same had been committed or incurred on land within the respective jurisdictions of the said court or justices. This statute (s. 9.) further

Subjects sailing to, or lying on, the enemy's coast with intent to smuggle spirits, &c. to be transported.

enacts, that all persons, being subjects of his majesty, who shall, voluntarily, and without his majesty's license, or the license of the privy council, or one of the principal secretaries of state, or of the first lord of the admiralty, or other lawful authority, and without sufficient excuse, proceed and sail in any ship, vessel, or boat, to any road or harbour upon the coast of any of his majesty's enemies, or shall be found in any ship, &c. lying on the coast or in any road or harbour of any country belonging to his majesty's enemies, without such license, or excuse as aforesaid, or under the protection of any batteries or other force on such coasts, or under the protection of any vessel belonging to his majesty's enemies, having on board, or having had on board on such voyage, or being in such harbour, or upon such coast, or under the protection of such batteries, with intent to take on board any spirits, tea, tobacco, or snuff, shall be guilty of felony, and be transported for any term not exceeding 7 years. And by s. 10. any such offence as last afore-

Such offences may be tried in any county.

s. 12.

Smuggling acts to extend to Isle of Man.

said may be alleged, laid, inquired of, and tried in any county, shire, or stewartry of this realm. By s. 12. so much of the [†45 Geo. 3. c. 72.] and 47 Geo. 3. st. 2. c. 66. (herein recited) and of this act, as are applicable to the islands of Guernsey, Jersey, and Alderney, shall extend to the Isle of Man.

No

* The words within the crotchets are omitted in the enacting part of this clause.

† It seems that the 45 Geo. 3. c. 121. *ante* p. 686. was the statute meant to be referred to.

No permanent law was made by the Irish parliament to restrain the offence of smuggling: But the provisions of the 45 Geo. 3. c. 121. 47 Geo. 3. st. 2. c. 66. and 48 Geo. 3. c. 84. *supra*, extend to Ireland: And the 46 Geo. 3. c. 106. I. which is the principal revenue regulation act of Ireland, contains the following clauses. By s. 56. if any person armed with guns, pistols, cutlasses, clubs, sticks, or other offensive weapons, shall hinder, molest, or resist any officer of customs or excise, or any officer appointed by or acting under the commissioners of customs and port duties, or the commissioners of inland excise and taxes, in the execution of his duty, by beating, maiming, or wounding any such officer, or any person acting in his assistance, it shall be lawful for such officers, and all persons by them called to their assistance, to oppose force to force; and if any person so hindering, &c. any such officer, or his assistants, shall be sued or prosecuted on account of such wounding, &c. they may plead the general issue, &c.; and all justices and persons having competent authority, before whom such officer, &c. shall be brought, shall admit them to bail. And by s. 60. if any officer of the navy, or any officer appointed by or acting under the said commissioners, or either of them, being on shore, or going on board, or returning from on board, or being on board any ship, boat, or vessel, within the limits of any port, harbour, or creek of Ireland, or within 8 leagues from the coast of Ireland, shall be opposed, obstructed, or assaulted, in the due execution of his duty, by any person, either by day or by night, every person so opposing such officer, and all such as shall act in his aid or assistance, shall be carried before a justice of peace residing near to the place where such offence shall be committed, or where such person shall be apprehended; and such justice shall, upon the oath of one witness, commit such person to the next county gaol, until the next court of *oyer and terminer*, or gaol delivery, or until such person shall be delivered by due course of law; and in case an indictment shall be found against such person, he shall, forthwith, plead thereto, without having

Revenue officers in Ireland may oppose force by force.

46 Geo. 3. c. 106. s. 56. I.

If sued, &c. for any wounding, &c. may plead general issue, and to be bailed.

s. 60.

Persons opposing or obstructing officers guilty of a misdemeanor.

s. 62.

*Shooting at
ships, &c. or
revenue officers,
a capital felony.*

time to traverse the same, and if convicted shall be guilty of a misdemeanor, and suffer such punishment as shall be awarded by the court. By s. 62. if any person on shore, or on board any ship, &c. shall maliciously shoot at or upon any ship, &c. belonging to his majesty's navy, or in the service of the said commissioners, within the limits of any port, &c. of Ireland, or within 8 leagues from any part of the coast of Ireland; or if any person being on shore or on board any ship, &c. shall maliciously shoot at, maim, or wound any officer of his majesty's navy, or any officer appointed by or acting under the said commissioners, whether attempting to go on board, or being on board, or returning from on board any ship, &c. or otherwise acting in the due execution of his duty on shore, or within the limits of any port, &c. of Ireland, or within 8 leagues from the coast of Ireland; or shall maliciously shoot at, maim, or wound any person aiding or assisting such officer in the execution of his duty, such offender, and every person aiding, abetting, or assisting therein, shall be guilty of felony without benefit of clergy. And by s. 63. if any person shall be charged

s. 63.

*Offenders not
surrendering
when indicted,
and required to
surrender by the
privy council, a
capital felony.*

with any offence made felony by this act, before a justice of peace, or a justice of the court of king's bench in Ireland, (if the offence be committed in Ireland, or within the limits of any of the ports thereof, or within 8 leagues of the coast thereof) by information of a credible person upon oath, by him to be subscribed, and shall be indicted for the same in the county where the offence shall have been committed, if committed within the body of any county, or in any county in Ireland, if the offence shall have been committed at sea, and within 8 leagues of the coast thereof, the clerk of the crown where such indictment shall be found, shall return such indictment and information to the clerk of the privy council in Ireland, or his deputy, who shall lay the same before the lord lieutenant and council, whereupon it shall be lawful for the lord lieutenant to make his order in council, requiring such offender to surrender himself, within 40 days after the first publication thereof in the Dublin Gazette, to the chief justice, or other justice of the king's bench in Ireland, or to any justice

justice of peace in Ireland, if the offence be committed in Ireland, or within the limits of any of the ports thereof, or within 8 leagues of the coast thereof, who shall, upon such offender surrendering himself, commit him to the county gaol, or to the prison of the place where he shall so surrender, to the end that he may be forthcoming to answer the offence charged; which order the said clerk of the council shall cause to be forthwith published in 2 successive Dublin Gazettes, to be, forthwith, transmitted to the sheriff of the county where the offence shall be committed; and if the offence shall not be committed in any county, but within the limits of any port, or within 8 leagues of the coasts of Ireland, to be transmitted to the sheriff of any county in Ireland near to the place where such offence shall be committed, which sheriff shall, within 14 days after the receipt thereof, cause the same to be proclaimed between the hours of 10 in the morning and 2 in the afternoon, in the market place, upon the market days of the 2 market towns in the same county in which, or near to the place where, such offence shall have been committed, and a true copy of such order shall be affixed upon some public place in such market towns; and in case such offender shall not surrender himself pursuant to such order of the lord lieutenant in council, he so neglecting or refusing to surrender, or escaping after such surrender, shall, from the day appointed for his surrender, be adjudged attainted of felony, and shall suffer death (as if convicted by verdict and judgment) without benefit of clergy; and it shall be lawful for the court of king's bench, or the justices of *oyer and terminer* or general gaol delivery for the county or place where such person shall be, to award execution against such offender, as if he had been convicted in said court of king's bench, &c. Provided (s. 64.) that it shall be lawful for any person so neglecting, &c. to surrender himself, to plead, *ore tenus*, in arrest of such execution, that he was at the time of issuing such proclamation, and continued to be until the expiration of such 40 days, out of Ireland, and shall aver that he did not fly for said offence; and there-

upon

s. 64.

Party apprehended after time for surrender, may plead ore tenus that he was out of the kingdom.

s. 65.
*Concealing of-
 fenders pro-
 claimed, felony
 punishable by
 transportation.*

*Offenders may be
 proceeded
 against by due
 course of law.*

s. 66.
*Opposing officer
 in seizing goods,
 or destroying,
 &c. goods seiz-
 ed, 1st offence
 £100. 2d of-
 fence, transpor-
 tation.*

s. 67.
*Recognizance of
 parties charged
 with misdemea-
 nors.*

upon a jury shall be impanelled to try such plea; and if such plea shall be found for the prisoner, then he shall, forthwith, plead to the indictment, and shall be tried for said offence, as if he had surrendered himself in due time. By s. 65. if any person shall, after the expiration of the time appointed for the surrender of any such offender, harbour, receive, conceal, aid, abet, or succour him, knowing him to have been so charged, and to have been required to surrender, and not to have surrendered pursuant to such order, such person, being prosecuted for the same within one year after such harbouring, &c. shall be guilty of felony, and be transported for 7 years. Provided that nothing herein shall hinder any judge, justice of peace, magistrate, or officer of justice, from taking and securing any such offender, for requiring whose surrender such order in council shall be made, by the ordinary course of law; and if any such offender shall be taken and secured before the expiration of the time within which he shall be so required to surrender, then no further proceedings shall be had upon such order in council, but such offender shall be brought to trial by due course of law. This statute further enacts (s. 66.) that if any person shall assault or beat any officer appointed by or acting under the said commissioners of customs, &c. or excise, &c. or any assistant of any such officer, in the seizing, distraining, or securing of any goods, wares, or merchandize, by virtue of any act relating to the revenues or things, &c. under the management of the said commissioners, or shall by force or violence rescue or carry away, or procure to be rescued, any such goods, &c. after such seizure, &c. or shall after such seizure, &c. destroy or damage such goods, &c. or any part of them, such offender shall for the first offence forfeit £100. and upon failure of payment shall suffer imprisonment for 12 calendar months, and for the second offence shall be transported for 7 years. And by s. 67. whenever any person shall be taken before any justice of peace for any offence declared to be a misdemeanor by any act in force in Ireland relating to the revenues, &c. under the management of

of the commissioners of customs, &c. or of excise, &c. such person shall not be admitted to bail, unless he shall first enter into a recognizance with 2 sufficient sureties, in £200. to the king, and the sureties in £100. each, conditioned that such person shall appear at the next court of *oyer and terminer* or general gaol delivery for the county in which the offence was committed, or for which the justice before whom he shall be brought shall act, and shall there answer and plead to any indictment which may be found for such misdemeanor, without traversing the same, and such recognizance shall, forthwith, be transmitted to the clerk of assize, or other proper officer of the court of *oyer and terminer*, &c. for such county. Provided (s. 68.) that no person shall be prosecuted for any offence declared to be a misdemeanor by this or any act in force in Ireland relating to any of the revenues under the management of said commissioners, unless the prosecution shall be commenced within 2 years next after the offence committed.

s. 68.

Limitation for
prosecuting mis-
demeanors.

II. The several provisions of the bankrupt laws, which relate to the offence of *fraudulent bankruptcy*, have been already stated in a preceding part of this work, Book 2. chap. 22.

§ 2.

Fraudulent
bankruptcy.

III. It was reserved for this place to state such clauses of the statutes regulating the rate of interest in England and Ireland, as provide for the punishment of the crime of *usury*. The 12 Ann. st. 2. c. 16. Eng. which (as already stated, vol. 1. p. 605) limits the interest of money to £5. in the £100. not only declares void all bonds, contracts, and assurances, whereupon there shall be reserved or taken above that rate; but further enacts, that every person which shall take, accept, and receive, by means of any corrupt bargain, loan, exchange, chevizance, shift, or interest, of any wares, merchandizes, or other thing, or by any deceitful way, for the forbearing or giving day of payment for one year, for their money or other thing, above £5. for £100. for a year, and so after that rate, &c. shall forfeit the treble value of the monies, wares, &c. so lent, bargained, exchanged, or shifted. And by s. 2. every scrivener, broker, solicitor, and

§ 3.

Penalty of tak-
ing more than
legal interest.12 Ann. st. 2.
c. 16. s. 1, Eng.

s. 2.

Payment to brokers, &c. for procuring loans of money, limited.

Penalty for taking more than the sum, &c. limited.

5 Geo. 2. c. 7. Ir.

17 Geo. 3. c. 26. s. 9. Eng.

§ 4.

Justices at their petty sessions may appoint examiners of weights and balances.

37 Geo. 3. c. 143. s. 1. Eng.

s. 2.

Powers and duties of such examiners.

and driver of bargains for contracts, who shall take for brokage, &c. or procuring the loan or forbearing of any money, above the rate of 5s. for £100. for a year, or above 12d. [*above the stamp duties,] for making or renewing of the bond or bill, [*or for any counter-bond or bill,] shall forfeit £20. [*with costs,] and suffer imprisonment for half a year: The one moiety of which forfeitures to be to the crown, and the other to him that will sue for the same [†in the county where the offences are committed.] And the 5 Geo. 2. c. 7. Ir. which reduced the rate of interest in Ireland to £6. *per cent.* contains clauses similar to the 12 Ann. st. 2. c. 16. *supra.* The clause of the 17 Geo. 3. c. 26. Eng. which relates to the brokage upon life annuities, has been already stated vol. 1. p. 604.

IV. The statutes made to restrain and punish deceits in particular trades, as those of bakers, brewers, butchers, &c. do not fall within the scope of this work. But the following statutes relative to the offence of *cheating*, as being of a more general nature, are proper to be here stated. By the 37 Geo. 3. c. 143. Eng. (which amends the 35 Geo. 3. c. 102. Eng.) it shall be lawful for the justices of peace, at their respective petty sessions, within the divisions, districts, and other places of the several counties in England and Wales, to appoint one person, or more, to examine the weights and balances within such divisions. And by s. 2. the persons so appointed, (having been first sworn by such justices duly and faithfully to execute said office,) shall, as often as said justices shall direct, in the day time, enter into the shop, mill, house, out-houses, and other premises near to such shop, &c. and into the stall or standing place of any person who sells by retail and weight, any wares, provisions, goods, or chattels, and search for and examine all weights and balances in such shop, &c. and seize any weight, &c. not being according to the standard

* The words within the crotchets not in the 5 Geo. 2. c. 7. Ir.

† “ In any of his majesty’s Four Courts in Dublin,” by the 5 Geo. 2. c. 7. Ir.

ard in the exchequer, or any false or unequal balance, which shall be found therein, and detain the same, to be produced before the justices in petty sessions, upon the hearing of the information herein-after mentioned; and the person in whose shop, &c. any such defective weight, or false balance, shall be found, shall, upon conviction thereof in petty sessions as aforesaid, upon view or confession, or upon the oath of a witness, forfeit any sum not exceeding 20s. nor less than 5s. as the said justices before whom such person shall have been convicted, shall adjudge, together with the costs attending such conviction; to be levied by warrant of said justices, by distress and sale of the goods of the offender; and also the expenses of making such distress, &c. And by s. 3. on conviction of such offender, the said justices shall cause such weights or balances to be forthwith broken and rendered useless, and the materials thereof to be sold, and the money arising from such sale, together with the amount of the forfeiture, to be paid by them to the treasurer of such county, &c. to be by him applied towards the expenses of carrying these acts into execution, and the residue, (if any) on account of the public stock of such county, &c.; and the said justices shall prepare returns of the forfeitures levied by them in pursuance of these acts, and also of the sums arising from the sale of such weights and balances, and shall transmit such returns signed by them, to the clerk of the peace for such county, &c. at every quarter sessions. Provided (s. 4.) that if the majority of the inhabitants of any parish, township, or place, within such county, &c. be desirous that any person or persons shall be specially appointed to examine the weights and balances within such parish, &c. it shall be lawful for such inhabitants, (at a vestry to be duly holden for that purpose) to nominate one substantial housholder or more, to be approved of by said justices at their respective petty sessions for the division or district wherein such parish, &c. shall so lie; which person shall have the same powers within such parish, &c. as are vested in any person appointed for any district. But by s. 5. no appointment for such parish, &c.

Penalty for having false weights &c.

s. 3.

How justices are to dispose of false weights, &c.

s. 4.

Examiners may be specially appointed in vestry

s. 5.

But inhabitants must first have procured standard weights.

s. 6.

35 Geo. 3. c. 102. s. 3. Eng.

Penalty for obstructing examiners, or refusing to produce weights.

s. 4.

Quarter sessions to allow recompense to examiners.

s. 5 & 6.

Proviso.

s. 7.

Justices to cause standard weights to be purchased out of the county rates.

&c. shall be made, until the inhabitants thereof have procured the proper weights, according to the standard in the exchequer, for the use of such parish, &c. to be deposited in the custody of the person to be appointed as last mentioned; and it shall be lawful for said justices in their petty sessions, to direct the costs of procuring such weights, and the recompense to be allowed to such person for his time and trouble in the execution of such office, within such parish, &c. to be paid out of the rate made for the relief of the poor within such parish, &c. And the following clauses of the 35 Geo. 3. c. 102. Eng. which are confirmed by the 37 Geo. 3. c. 143. s. 6. are to be here stated. By s. 3. if any person shall wilfully obstruct, hinder, resist, or in any wise oppose any of the persons hereby empowered to examine such weights and balances, or if any person selling or retailing by weight, shall refuse to produce his weights and balances in order to be viewed and examined, such offender, on being convicted on oath before any justice of peace, shall forfeit any sum not exceeding 40s. nor less than 5s. as such justice shall adjudge; and such forfeiture shall be levied by warrant of such justice, by distress and sale of the goods of the offender, and be paid to the treasurer of the county, &c. where the offence shall be committed, to be by him applied towards the expenses of carrying this act into execution, and the residue (if any) in aid of the general county rate. By s. 4. the justices at their quarter sessions may allow persons so appointed a reasonable recompense to be paid out of the general county rate. Provided (s. 5.) that any person convicted of an offence under this act, and who shall suffer for the same, shall not be punished for such offence by virtue of any other act. By s. 6. this act shall not extend to lessen or prevent the authority which any person or body corporate, or any person appointed at any court leet for any hundred or manor, may have for the examining, regulating, seizing, breaking, or destroying any weights or balances within their jurisdictions. And by s. 7. for the more effectually carrying this act into execution, the said justices are empowered and required to purchase for the use

use of their respective counties, &c. out of the general county rate, proper weights, according to the standard of the exchequer; which shall be deposited for the inspection of all persons, either with the clerks of the peace, or with some proper person, in some convenient place within their respective counties, &c. as said justices shall direct; and shall be produced by the person in whose custody the same shall be lodged, (upon reasonable notice,) at such time and place as any person shall, by writing under his hand, require and appoint; the person so requiring the production of said weights paying the reasonable costs of producing the same. By

s. 8. no person shall be prosecuted for any offence against this act, unless information thereof, upon oath, shall have been given to some justice of peace, within one month after the offence committed. And by the 37

s. 8.

No person to be prosecuted, unless information within a month.

37 Geo. 3. c. 143. s. 7. Eng.

Geo. 3. c. 143. s. 7. no proceedings touching the conviction of any offender against these acts, shall be removed by *certiorari*, or other writ, into any court of record at Westminster. By s. 8. a form is prescribed, according to which (or in words to the same effect) the con-

Proceedings not to be removed.

s. 8.

Form of convictions.

viction of offenders against these acts shall be made out.

To this head of cheating may also be referred the 27 Geo. 3. c. 46. Ir. which provides, that the sheriffs of the several cities in Ireland shall summon and return to the justices of peace at the quarter session, upon a precept to be issued by them for that purpose, 24 citizens of

Market juries how appointed in cities of Ireland.

27 Geo. 3. c. 46. s. 1. Ir.

such cities, 12 of whom shall be sworn as a market jury for such cities; and the justices of such cities shall cause such market juries to be sworn in open court at the sessions, one by one: "That he will, well, truly, and di-

Their oath.

ligently execute the office of a market juror in such city, without favour or affection, malice or ill will, to any person whatsoever." And the said market jury

Their duty.

shall at seasonable hours visit the markets, store-houses, working-houses, cellars, and shops in such cities, where provisions and victuals are sold or exposed for sale, or made up or making up for sale, and inspect the quality of such provisions, &c. and in case such jury, or any one of them, shall find any unwholesome or bad provisions

*Duration of
their office.*

*Penalty for re-
fusing to exe-
cute such office.*

Proviso.

s. 2.

*Powers of mar-
ket jurors.*

28 Geo. 3.c.42.
s. 9. Ir.

*Market juries to
be in counties of
towns, and cor-
porate towns.*

§ 5.

*Description of
forestallers.*

51 Hen. 3. st. 6.
E. & I.

sions, or victuals fraudulently or illegally made up, said jury, or one of them, may seize such provisions, &c. and the person exposing the same to sale, or claiming to be the owner thereof, and carry them before the chief magistrate of such cities, who is hereby empowered to dispose of such provisions, &c. and of such person according to law: And each market jury so sworn, or one of them, shall have full power to execute said office, from the time of being sworn, until the next market jury shall be sworn at the ensuing quarter sessions to be held for such cities: And if any person being duly summoned and returned to serve as a market juror as aforesaid, shall not appear, and take the oath, or shall refuse or neglect to execute the said office, it shall be lawful for such justices at their sessions to impose a fine not exceeding £6. on every such person; and the chief magistrate of such city shall issue his warrant for the levying such fine by distress and sale of the goods and chattels of such person, and the sum so levied shall be applied to the widening or keeping in repair the streets, lanes, and avenues of such cities: provided that no person shall be obliged to serve as a market juror more than once in one year. And by s. 2. such jury so sworn, or one of them, shall have power to examine bread for sale in the several shops or bake-houses of bakers, and also the several weights and measures in said cities, and if any bread shall be found illegally or fraudulently made, or any of the weights or measures less than the standard weight or measure, to seize and carry the same to the chief magistrate of such city, to be disposed of according to law. And the provisions of this act are by the 28 Geo. 3. c. 42. s. 9. Ir. extended to all counties of towns, and corporate towns, in this kingdom.

V. The 51 Hen. 3. st. 6. E. & I. which established an inquest or market jury to inquire of any violations of the assize of bread, ale, and wine, and of false weights and measures, also provided that they should inquire of *forestallers* that buy any thing before the accustomed hour, against the good state and weal of the town and market, or that pass out of the town to meet such things

as come to the market, to the intent to sell the same in the town too dear to regrators, than they would that brought it, in case they had come to the town or market.

And by a statute *incerti temporis* c. 10. no forestaller shall be suffered to dwell in any town, who manifestly is

Stat incert.
temp. c. 10.

an oppressor of the poor, a public enemy of the country, who meeting grain, fish, or other things, coming to be sold, doth make haste to buy them before others, thirst-

Punishment of
forestallers of
grain, &c.

ing after wicked gain, oppressing the poor, and deceiving the rich, and by that means goeth about to sell the said things much dearer than he who brought them; who cometh about merchant strangers, and offereth them his help, and informeth them that they may sell their wares dearer than they meant to have done: he that is convicted thereof the 1st time, shall be amerced, and shall lose the thing so bought, according to the custom of the town; he that is convict the 2nd time shall have judgment of the pillory; the 3rd time he shall be imprisoned and ransomed; the 4th time he shall abjure the town; and likewise they that give them counsel, help, or favour.

And by the 25 Edw. 3. st. 4. c. 3. E. & I. confirmed by the 2 Ric. 2. st. 1. c. 2. E. & I. the forestallers of wines and other victuals, and merchandizes that come

25 Edw. 3. st. 4.
c. 3. E. & I.
2 Ric. 2. st. 1.
c. 2. E. & I.

to the towns of England, by land or by water, if they be thereof attainted at the suit of the king, before mayor, bailiff, or justices thereto assigned, or elsewhere in the king's court; the things forestalled shall be forfeit to the king, if the buyer hath made gree to the seller; and if he have not made gree of all, but by earnest, the buyer shall forfeit as much as the forestalled goods amount to; and if he have not whereof, he shall have 2 year's imprisonment, and more at the king's will; and if they be attainted at the suit of the party, the party shall have one half of such things forestalled, or the price, of the king's gift, and the king the other half. And by the

Punishment of
forestallers of
wines, &c.

28 Edw. 3. c. 13. s. 3. E. & I. no merchant, nor other, shall go by land nor by water to meet ships charged with merchandizes, to forestal them, or to give earnest by way of forestalling, upon the pains contained in the 27 Edw. 3. st. 2. c. 3. E. & I. viz. of life and member, and

28 Edw. 3. c. 13.
s. 3. E. & I.

forfeiture

forfeiture of said merchandizes, and of goods and chattels, lands and tenements : but so much of the 27 Edw. 3. st. 2. as imposes the forfeiture of life and member, is repealed by the 38 Edw. 3. st. 1. c. 6. E. & I. These statutes have not been repealed by the 12 Geo. 3. c. 71.

33 Hen. 8. st. 1.
c. 2. Ir.

*Persons buying
hides, &c. to
sell again, but
in open market,
adjudged fore-
stallers.*

s. 2.

*Who may dis-
pense with this
act.*

s. 3.

*Offences where
inquirable.*

s. 5.

*Proviso as to
tanners, &c.*

§ 6.

*Persons buying
corn, having suf-
ficient store, or
buying to sell
again, adjudged
regrators.*

8 Edw. 4. c. 2.
Ir.

§ 7.

*All monopolies,
&c. shall be
void.*

Eng. By the 33 Hen. 8. st. 1. c. 2. Ir. no person, to the intent to sell the same again, shall buy, or cause to be bought, within Ireland, any hides, fells, checkers, fleges, yarn, linen, cloth, wool, or flock, in any other place, but only in the open market or fair; upon pain of being deemed a forestaller of the king's market. But by s. 2. if any inconvenience shall come by means of this act, the lord deputy, lord chancellor, lord treasurer, vice treasurer, the 3 chief judges, and the master of the rolls, or 5 of them at the least, (whereof the lord deputy and lord chancellor to be two,) shall have power, by proclamation made in any of the said markets or fairs, to make void this act, or such part thereof as they shall think good. By s. 3. the justices of the king's bench, and every justice of peace in open sessions, shall have power to inquire of offences against this act, and to punish offenders, and tax fines upon offenders, as though they were convicted of forestalling the king's market. Provided (s. 5.) that this act shall not extend to any tanner or barker, for the buying of any hides to be tanned or barked, so that they do tan or bark the same.

VI. By another ancient Irish statute 8 Edw. 4. c. 2. Ir. no man having sufficient store of corn of his own, shall buy any corn in the common market, nor shall persons called badgers, buy any corn in form aforesaid, upon such pain as is made against *regrators* of the king's market, and they shall be judged in law as common regrators of the market. Also it shall not be lawful to any man which will buy any corn in the common market, to sell the same again in the same market, nor in any other market, upon pain to be adjudged a common regrator of the market.

VII. The 21 Jac. 1. c. 3. Eng. declares and enacts, that all *monopolies*, commissions, grants, licenses, charters, and letters patent to any person or body corporate, for

for the sole buying, selling, making, working, or using 21 Jac. 1. c. 5. s. 1. Eng.
of any thing within this realm, or Wales, or of any other
monopolies, or of power to dispense with any others,
and all proclamations, inhibitions, restraints, warrants
of assistance, and all other matters tending to the insti-
tuting, strengthening, furthering or countenancing the
same, are contrary to law and void. And by s. 3. all s. 3.
persons, &c. shall be disabled to have or exercise any
monopoly, or any such commission, &c. or other thing All persons dis-
abled to use
monopolies.
as aforesaid, or any liberty, power, or faculty, grounded
or pretended to be grounded upon any of them. By
s. 2. all monopolies, and all such commissions, &c. shall s. 2.
be examined and determined according to the common Monopolies to
be tried by the
common law.
law. By s. 4. if any person shall be disturbed by pre- s. 4.
text of any monopoly, or other matter aforesaid, he may
have his remedy at common law, by action upon this sta-
tute, in K. B. C. B. or Exc. wherein he shall recover
three times the damages sustained, and double costs
wherein, &c.; and if any person after notice given that
the action is grounded upon this statute, shall procure The party
grieved by pre-
text of any mo-
nopoly, to reco-
ver treble da-
mages and dou-
ble costs.
the same to be stayed before judgment, by any order,
warrant, or authority, save only of the court where such
action shall be depending, or, after judgment, shall pro-
cure the execution to be stayed, save only by writ of
error or attain, the person so offending shall incur the
penalties provided by the statute of *præmunire*, 16 Ric.
2. c. 5. Provided (s. 6.) that any declaration before s. 6.
mentioned shall not extend to any letters patent and
grants of privilege for 14 years or under, (to be ac- Proviso as to
patents for new
manufactures.
counted from the date of the said letters patent) of the sole
working or making of any new manufactures, to the first
inventors, which others at the time of making such let-
ters patent shall not use, so as they be not contrary to
law, nor mischievous to the state, by raising prices of
commodities at home, or hurt of trade, or generally in-
convenient. And by s. 9. this act shall not extend to s. 9.
the city of London, or to any city or town corporate,
concerning any grants, charters, or letters patent to Charters to cor-
porations saved.
them made, or concerning any custom used by them, or
unto any corporations or fellowships of any trade, or to
any companies of merchants erected for the ordering of
any

- any trade. And by s. 10. this act shall not extend to any letters patent or grants of privilege concerning printing; [nor to any commission, &c. concerning the digging, making, or compounding of salt-petre or gun-powder, or the casting or making of ordnance, or shot for ordnance]; nor to any grant or letters patent made or to be made, of any office now in being, and put in execution, other than such offices as have been decreed by his majesty's proclamations. By s. 11. this act shall not extend to any commissions, &c. concerning the digging or making of alum, or alum mines. And by s. 12. this act shall not extend to any grants, &c. for licensing the keeping of taverns, or retailing of wines, or any compositions for such licenses, so as the benefit of such compositions be reserved for the use of his majesty. And other exceptions are made of grants to particular persons, &c. But with respect to salt-petre, gun-powder, &c. which are excepted in the 21 Jac. 1. c. 3. *supra*, the 16 Car. 1. c. 21. s. 4. Eng. enacts, that if any person shall put in execution any letters patent, proclamation, edict, act, order, warrant, restraint, or other inhibition, whereby the importation of gun-powder, salt-petre, brimstone, or other materials from foreign parts, or the making of gun-powder within the realm, shall be any way prohibited or restrained, such offender shall incur the penalties of the statute of *præmunire*, 16 Ric. 2. c. 5. And it is further enacted by the 1 Jac. 2. c. 8. s. 3. Eng. that if any person, &c. shall obtain from the king any letters patent, license, or grant, for the sole making or importing any gun-powder, arms, ammunition, or other utensils of war, and shall put the same in execution, or by colour thereof molest or hinder any persons who lawfully make any the things before mentioned; or shall obtain any letters patent, &c. for the importing of gun-powder, &c. by way of merchandize, to make profit thereof, other than for the immediate furnishing of the public stores of the king; such offender shall incur the penalties of the statute of *præmunire*, 16 Ric. 2. c. 5. and be disabled to hold any office under the king; and every such letters patent
- s. 10.
Patents concerning printing, salt-petre, gun-powder, &c. and offices, saved.
- s. 11.
Patents for making alum, &c. also excepted.
- s. 12.
Licenses for keeping taverns, excepted.
- 16 Car. 1. c. 21. s. 4. Eng.
Penalty for putting in force, letters patent, &c. restraining the importation or making of gun-powder, &c.
- 1 Jac. 2. c. 8. s. 3. Eng.
Further penalties for obtaining, &c. letters patent for the sole making or importing of gun-powder, &c.
- Exception as to the supply of the king's stores.*

patent shall be void. No statute restraining or prohibiting monopolies, has been made in Ireland.

VII. With respect to *combinations*: the 2 & 3 Edw. 6.

§ 7.

c. 15. Eng. enacts, that if any butchers, brewers, bakers, poulterers, cooks, costermongers, or fruiterers, shall conspire, covenant, promise, or make any oaths, that they

Combinations of victuallers and artificers, &c. how punished.

shall not sell their victuals but at certain prices, or if any artificers, workmen, or labourers, do conspire, &c. that

2 & 3 Edw. 6.]
c. 15. s. 1. Eng.

they shall not do their work but at a certain price, or shall not take upon them to finish that another hath begun, or shall do but a certain work in a day, or shall not

work but at certain times; every person so conspiring, &c. shall forfeit for the 1st offence £10. to the king, if

he pay the same within 6 days after conviction, or else shall suffer 20 days imprisonment, and shall only have

bread and water for his sustenance; and for the 2nd offence shall forfeit £20. if he pay the same within 6 days,

or else shall suffer punishment of the pillory; and for the 3rd offence shall forfeit £40. if he pay the same within

6 days, or else shall sit on the pillory, and lose one of his ears, and also shall be taken as a man infamous.

And by s. 2. if any such conspiracy, &c. be made by any society or company of the victuallers above mentioned, with the consent of the more part of them, besides the punishment for the offender, their corporation

s. 2.

shall be dissolved. And by s. 3. justices of assize, justices of peace, mayors, bailiffs, and stewards of leets, at their sessions, leets, and courts, shall have power to

Company of victuallers conspiring, dissolved.

inquire, &c. of all offences against this statute. But by the 2 Geo. 3. c. 14. s. 1. Eng. no brewer, inn-keeper,

s. 3.

victualler, or other retailer of strong beer or ale, shall be sued or molested for advancing the price of strong

Offences how inquirable.

beer or ale in a reasonable degree. And to prevent unlawful combinations of workmen; the 39 & 40 Geo. 3.

2 Geo. 3. c. 14.
s. 1. Eng.

c. 106. Eng. enacts, that all contracts, covenants, and agreements, in writing or not in writing, heretofore

The price of beer or ale may be reasonably advanced.

made or entered into between any journeymen manufacturers, or other persons, for obtaining an advance of

39 & 40 Geo 3.
c. 106. s. 1. Eng.

wages of them, or any other journeymen, &c. in any manufacture, trade, or business, or for lessening or al-

All contracts for obtaining an advance of wages, altering the usual time of working, decreasing the quantity of work, &c. (except bettering

*tween masters
and men) ille-
gal and void.*

s. 2.

*Punishment of
such offences.*

s. 3.

*Combination for
advancing wages
&c. endeavour-
ing to prevent
workmen from
hiring, or to
prevail on them
to quit employ-
ment, or refus-
ing to work with
other workmen,
here punished.*

tering their usual hours or time of working, or for decreasing the quantity of work, (save any contract between any master and his journeyman or manufacturer, on account of the work or service of such journeyman, &c.) or for preventing any person from employing whomsoever he shall think proper in his manufacture, &c. or for controlling or any way affecting any person carrying on any manufacture, &c. in the conduct or management thereof, shall be illegal and void. And by s. 2. no journeyman, workman, or other person, shall be concerned in the making of or entering into any such contract, &c. as is herein-before declared to be illegal; and every person who shall be guilty of any of said offences, being thereof convicted upon his confession, or oath of one witness, before 2 justices of peace for the county, &c. where such offence shall be committed, (which oath either of such justices is empowered to administer, and in all other cases in pursuance of this act,) within 3 calendar months after the offence, shall, by order of such justices, be committed to the common gaol within their jurisdiction, for any time not exceeding 3 calendar months, or to the house of correction within the same jurisdiction, to be kept to hard labour for any time not exceeding 2 calendar months. And by s. 3. every journeyman, &c. who shall enter into any combination contrary to this act; or who shall, by giving money, or by persuasion, solicitation, or intimidation, or other means, wilfully and maliciously endeavour to prevent any unhired or unemployed journeyman, &c. in any manufacture, &c. from hiring to any manufacturer or tradesman, or person conducting any manufacture, &c.; or who shall for any purpose contrary to this act, wilfully and maliciously decoy, persuade, solicit, intimidate, influence, or prevail, or attempt or endeavour to prevail on any journeyman, &c. to quit or leave his work, service, or employment; or who shall wilfully and maliciously hinder or prevent any person from employing in his manufacture, trade, or business, such journeymen, &c. as he shall think proper, or who being hired or employed shall, without just or reasonable cause, refuse to work with any other journeyman,

man, &c. being convicted as in s. 2. *supra*, shall be punished as in s. 2. *supra*. By s. 4. every person, (whether employed in such manufacture, &c. or not,) who shall attend any meeting held for the purpose of entering into any contract, &c. by this act declared to be illegal, or of entering into, supporting, maintaining, continuing, or carrying on any combination for any purpose by this act declared to be illegal; or who shall summon, give notice to, call upon, persuade, entice, solicit, or by intimidation or other means, endeavour to induce any journeyman, &c. to attend any such meeting; or who shall collect, demand, ask, or receive any money from any such journeyman, &c. for any of the purposes aforesaid; or who shall persuade, &c. or endeavour to induce any such journeyman, &c. to enter into or be concerned in any such combination; or who shall pay any money, or make or enter into any subscription or contribution, for the support or encouragement of any such illegal meeting or combination, being convicted as in s. 2. *supra*, shall be punished as in s. 2. *supra*. And by s. 5. no person shall wilfully pay or give any sum of money as a subscription or contribution for paying the expenses incurred by any person acting contrary to this act, [*or] by payment of money or other means, support or maintain any journeyman, &c. or contribute towards his support, for the purpose of inducing him to refuse to work, or to be hired or employed in any manufacture, &c. and every person who shall be guilty of any such offence shall forfeit any sum not exceeding £10.; and every journeyman, &c. who shall collect or receive any money or other valuable thing for any of said purposes, shall forfeit a sum not exceeding £5.; one moiety of such penalties to the king, and the other to the informer and the poor of the parish where such offence has been committed, equally between them; and said offences shall be determined in a summary way before 2 justices of peace for the county, &c. where such offences shall be committed, and the conviction may be on the oath of one witness; and the amount of the forfeitures shall be determined by such justices, but not exceeding

s. 4.

Persons attending meetings of combiners, or summoning, &c. journeymen to attend such meetings, or collecting money for such purposes, how punished.

s. 5.

Persons paying contributions for support of combinations, liable to what penalty.

* This word omitted.

Penalty for collecting such contributions.

the sums before mentioned; and in case any such penalty shall not be forthwith paid, such justices shall, by warrant, cause the same to be levied by distress and sale of the offenders goods and chattels, together with all costs attending such distress and sale; and in case no sufficient distress can be had, such justices shall, by warrant, commit the offender to the common gaol within his jurisdiction, for any time not exceeding 3 calendar months, nor less than 2; or to some house of correction within their jurisdiction, to be kept to hard labour for any time not exceeding 2 calendar months. By

s. 6.

Such contributions forfeited, and how disposed of.

s. 6. all sums of money which heretofore have been paid or given as a subscription or contribution towards any of the purposes prohibited by this act, and shall, for 3 calendar months after the passing of this act, remain undivided in the hands of any treasurer, collector, receiver, trustee, agent, or other person, or placed out at interest, and all sums of money which shall, after the passing of this act, be paid or given as a subscription, &c. for any of the purposes prohibited by this act, shall be forfeited, one moiety to the king, and the other to such as will sue for the same in any court of record at Westminster; and any treasurer, &c. in whose hands, or in whose name, any such money shall be, or shall be placed out, or unto whom the same shall have been paid or given, shall be sued for the same as forfeited. And

s. 7.

Informations to be preferred for discovery of such contribution money.

by s. 7. every person who shall be liable to be sued for the same, shall be compellable to answer, upon oath, to any information which shall be preferred against him in any court of equity, by or in the name of the attorney general, or at the relation of any informer, for discovering the money so paid; and such court shall make such orders and decrees therein, as shall seem just; and no person shall demur to or refuse to answer such information, by reason of any penalty to which such person may be liable in consequence of any discovery sought thereby. Provided (s. 8.) that upon payment into the court

s. 8.

How collectors, &c. of such money may discharge themselves.

in which such information shall be filed, of all the money paid to such treasurer, &c. for any of the prohibited purposes aforesaid, and remaining in his hands at the time

time of filing such information, and upon making a full discovery of all the securities upon which all money not remaining in his hands shall have been placed out, the person so paying such money, and making such discovery, shall be discharged from all forfeitures incurred by reason of having collected or received such money, or otherwise acted concerning the same, and from all suits respecting the same; nor shall any person be liable to any forfeiture or prosecution, in respect of any sum of money which such person shall discover to have been paid, received, or given, by any answer to such information. By s. 9. every person who shall of-

s. 9.

fend against this act, may be compelled to give his testimony as a witness, on behalf of his majesty, or of the prosecutor or informer, upon any information to be exhibited under this act, against any other person not being such witness; and in all such cases, every person having given his testimony shall be indemnified against any information to be laid, or prosecution to be commenced against him, for having offended in the matter relative to which he shall have given evidence. By s. 10.

Offenders compellable to give evidence.

s. 10.

on information on oath before any justice of peace, of any offence committed against this act, within his jurisdiction, such justice shall summon the person charged to appear before any 2 justices, at a certain time and place to be specified, and if such person shall not appear, then such justices (proof on oath having been first made before him of the due service of such summons upon such person, by delivering the same to him personally, or leaving the same at his usual place of abode, provided the same shall be left 24 hours before the time appointed to attend said justices) shall issue their warrant for apprehending the person so summoned, and bringing him before such justices; or it shall be lawful for such justices, without issuing any previous summons, upon information on oath, to issue their warrant for apprehending the person by such information charged to have offended against this act, and bringing him before such justices; and upon the person complained against appearing upon such summons, or being brought by vir-

Justices may summon offenders, and acquit or convict parties appearing or absconding.

tue

s. 11.

*Justices may
commit witnesses
for non-appear-
ance, or refusal
to give evidence.*

tue of such warrant before such justices, or upon proof on oath of such person absconding, then such justices shall make inquiry touching the matters complained of, and upon confession by the party, or proof by one witness upon oath, convict or acquit the party. By s. 11. the justices before whom any such complaint shall be made, shall, at the request in writing of any of the parties, issue their summons to any witness to appear and give evidence before such justices at the time and place appointed for hearing such complaint, and which time and place shall be specified in such summons; and if any person so summoned shall not appear at such time and place, or offer some reasonable excuse for his default, or, appearing, shall not submit to be examined touching the matter of such complaint, then it shall be lawful for such justices, (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justice of the due service of such summons on such person, by delivering the same to him, or by leaving the same 24 hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person) by warrant under the hands of such justices, to commit such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justices, until such person shall submit to be examined before such justices. By s. 12. the justices

s. 12.

*Forms prescribed
for convictions
and commit-
ments.*

before whom any person shall be convicted of any offence against this act, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause such convictions, and the warrants for such commitments, to be drawn up in the form, or to the effect set forth in the first schedule to this act.* And by s. 13. the justices before whom any such conviction shall be had, shall

s. 13.

cause

* So much of the schedule to this act, as contains the form intituled, "Form of conviction and commitment" and also as contains the form intituled, "Form of conviction in a pecuniary penalty", is repealed by the 41 Geo. 3. c. 38. E. which substitutes other forms.

cause the same to be fairly written on parchment, and transmitted to the next general sessions, or quarter sessions of the peace for the county, &c. wherein such conviction was had, to be kept amongst the records of said sessions; and in case any person shall appeal, in manner herein-after mentioned, from the judgment of said justices to the said general sessions, or quarter sessions, the justices in such sessions shall proceed to the hearing of the appeal according to the directions of this act. *Convictions to be transmitted to sessions.* Provided (s. 14.) that nothing in this act shall take away or abridge the powers given to any justice of peace by any act of parliament now in force, touching any combinations of manufacturers, journeymen, or workmen, or for settling disputes between masters and their journeymen, &c. in any manufacture, &c. or the rate of wages to be paid to such journeymen, &c. or the mode or time of their working, or the quantity of work to be done, or touching any matter provided for by this act. *s. 14. Proviso as to former laws.* And by s. 15. nothing herein shall authorize any person carrying on any manufacture, trade, or business, to employ therein any journeyman or workman contrary to the provisions of any act now in force, for regulating the manner of carrying on any particular manufacture, &c. without the previous license in writing of one justice of peace for the county, &c. in which such manufacture, &c. shall be carried on, expressing the cause of granting the same; which license it shall be lawful for one such justice to grant whenever the qualified journeymen, &c. usually employed in any manufacture, &c. shall refuse to work for reasonable wages, or to work for any particular person, or to work with any persons, or shall, by refusing to work, for any cause, or by misconducting themselves when employed, impede the ordinary course of any manufacture, &c. or endeavour to injure the person carrying on the same. *s. 15. Proviso as to the powers of justices to dispense with former laws, where the ordinary course of the manufacture is obstructed.* Provided (s. 16.) that no justice of peace, being also a master in the particular trade or manufacture concerning which any offence is charged to have been committed under this act, shall act as such justice. *s. 16. Master in the particular trade not to act as justice.* By s. 17. all contracts, covenants, and agreements, in writing or not in writing, between any masters or other

*Combinations of
masters, how
punished.*

other persons, for reducing the wages of workmen, or for adding to or altering the usual hours or time of working, or for encreasing the quantity of work, shall be illegal and void; and such master, being convicted by the oath of a witness before 2 justices of peace for the county, &c. where such offence shall have been committed, within 3 calendar months after the offence, shall forfeit £20. one moiety to the king, and the other, in equal shares, to the informer, and poor of the parish where such offence shall have been committed; and in case such penalty shall not be forthwith paid, such justices shall, by warrant under their hands, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs attending such distress and sale; and in case no sufficient distress can be had, such justices shall by their warrant, &c. commit the offender to the common gaol, or some house of correction within their jurisdiction, for any time not exceeding 3 calendar months, nor less than 2 calendar months.

*Disputes be-
tween masters
and workmen
may be settled
by arbitration.*

s. 18.

And that a cheap and summary mode be established for settling all disputes between masters and workmen respecting wages and work; this statute provides (s. 18.) that in all cases that shall arise within England, where the masters and workmen cannot agree respecting the price to be paid for work actually done in any manufacture, or any injury alleged to have been done by the workmen to the work, or respecting any supposed delay of the workmen in finishing the work, or the not finishing such work in a workman-like manner, or according to any contract; and in all cases of difference touching any agreement for work or wages, between masters and workmen in any trade or manufacture, which cannot be otherwise adjusted between them, it shall be lawful for such masters and workmen to demand and have an arbitration and reference of such matters in dispute; and each of them is hereby authorized to appoint an arbitrator on his part, by writing subscribed by him in the presence of and attested by one witness, in the form expressed in the 2nd schedule to this act, and to deliver the same personally to the other party, or to leave

leave the same for him at his usual place of abode, and to require the other party to name an arbitrator in like manner within 2 days after such arbitration shall have been so demanded; and such arbitrators, after they shall have taken upon them the business of said arbitration, shall summon before them, and examine upon oath, the parties and their witnesses (which oath the arbitrators are to administer according to the form in the 2nd schedule to this act,) and forthwith proceed to determine the matters in dispute; and the award to be made by such arbitrators within the time herein-after limited, shall be final between the parties; but in case such arbitrators shall not agree to decide such matter, and shall not make and sign their award within 3 days after the signing of the submission to their award by both parties, it shall be lawful for either of the parties to require such arbitrators forthwith to go before a justice of the peace of the county, &c. where such dispute shall happen and be referred, and to state to such justice the points in difference between the arbitrators, which points the said justice shall determine, and for that purpose examine the parties and their witnesses upon oath, if he shall think fit; which determination of such justice shall be made and signed within 3 days after the expiration of the time hereby allowed the arbitrators to make and sign their award, and shall be final between the parties; and if either of the parties, or their witnesses, having been duly summoned, shall neglect to attend such arbitrators at the time and place by them appointed, any justice of peace acting in and for the county, &c. where such dispute shall happen, shall, proof on oath being made before him of the service of such summons personally, and also upon the like proof of the neglect or refusal of such person to attend the said arbitrators, (unless a reasonable excuse be made for such non-attendance) shall issue his warrant under his hand for the apprehending and bringing such person before him; and if such person being so brought shall still refuse to be examined, or to give his testimony before such arbitrators, such person shall be committed by said justice to.

For default of arbitrators a justice of peace may determine differences.

Justices may commit persons neglecting or refusing to attend upon such arbitrations.

- to the house of correction within his jurisdiction, until he shall submit to be examined before the arbitrators, or until the time for making an award by such arbitrators shall be expired. Provided (s. 19.) that if the parties who shall have signed any submission to arbitration, shall be desirous to extend the time hereby limited for making the award or umpirage, it shall be lawful for them to extend the same by indorsement on the back of such submission, to be signed by both of them in the presence of one witness, or more. Provided (s. 20.) that the submission to such arbitration, and the award and umpirage to be made thereon, shall and may be drawn up and written at the foot of such submission, upon unstamped paper, in the forms set-forth in the 2nd schedule to this act. And provided (s. 21.) that there shall in all cases be written or engrossed 2 parts of the submission to arbitration, one for each of the parties subscribing the same. By s. 22. in every case of dispute between masters and workmen in such trade or manufacture, if an arbitration shall be demanded, and the submission thereto signed, and an arbitrator therein named by either of the parties, and the other of them shall refuse or neglect to sign the submission, and appoint his arbitrator within the time herein-before limited, the party so neglecting or refusing, shall, on conviction before 2 justices of peace for the county, &c. where such offence shall have been committed, forfeit £10. one moiety to his majesty, and the other to the poor of the parish wherein such offence shall have been committed; and in case such penalty shall not be forthwith paid, such justices shall, by warrant under their hands, cause the same to be levied by distress and sale of the offender's goods and chattels, together with the costs of such distress and sale, and in case no sufficient distress can be had, such justices shall, by warrant under their hands, commit the offenders to the common gaol, or some house of correction, within their jurisdiction, for any time not exceeding 3 nor less than 2 calendar months; and if either party shall refuse to perform what by such award or umpirage he shall be directed to do, and shall be thereof convicted before
- s. 19.
- Parties may extend the time for making award.*
- s. 20.
- Forms for submission and award.*
- s. 21.
- Each party to have a copy of the submission.*
- s. 22.
- Penalty for party refusing to sign submission and appoint arbitrator.*
- Penalty for not performing award.*

before 2 justices of peace for the county, &c. where such offence shall be committed, it shall be lawful for such justices, by warrant under their hands, to commit the offender to the common gaol, or house of correction, until he shall fully perform such award or umpirage.

Proviso.

Provided that nothing in this act shall make any person guilty of any offence in not attending at more than one arbitration at the same time, or more than two arbitrations in one day; and it shall be lawful for any master who shall not be actually resident at the time, at any place where his trade or manufacture shall be carried on, to authorize any person to act for him in signing submissions to arbitration, and attending arbitrators or justices touching the matter of any arbitration.

By s. 23. any person convicted of any offence punishable by this act, may appeal to the next court of general sessions, or quarter sessions of the peace held for the county, &c. wherein such offence was committed; and the execution of every judgment so appealed from, shall be suspended in case the person so convicted shall immediately enter into recognizance before such justices, in the penalty of £10. with 2 sureties in £5. each, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment of the said next general sessions, or quarter sessions, and to pay such costs as the said court shall award; and the justices in the said next court of general sessions, or quarter-sessions, shall determine the said appeal, and award reasonable costs, which decision shall be final; and if the judgment shall be affirmed, such appellant shall forthwith pay the penalty mentioned in such conviction, and the costs awarded to be paid by such appellant; and in default of payment, or in case such conviction shall contain a judgment of imprisonment, such appellant shall be committed by said court to the common gaol, or house of correction, according to such conviction, and for the time therein mentioned, and also until the payment of such costs as shall be awarded to be paid by such appellant. By s. 25. any suit for any

s. 23.

Appeal to general or quarter-sessions.

s. 25.

Limitation of actions.

thing done in pursuance of this act, or for any cause herein

*Pleading.**Costs.*

*Contracts, &c.
by clubs of arti-
ficers. &c. re-
gulating trade,
settling prices,
advancing wa-
ges, or lessening
hours of work,
illegal and void.
3 Geo. 2. c. 14.
s. 1. Ir.*

*Punishment of
such offenders.*

s. 2.

*Penalty for arti-
ficer, &c. quit-
ting service be-
fore his time, or
work 3 days, or
returning work
unfinished.*

herein contained, shall be commenced within 3 calendar months after the thing done, and shall be laid in the proper county, and the defendant may plead the general issue, &c. and shall have full costs of verdict, nonsuit, discontinuance, or judgment.

By the 3 Geo. 2. c. 14. Ir. all contracts, covenants, or agreements, and all by-laws, ordinances, rules or orders, in any unlawful clubs or societies made or entered into by or between any persons brought up in, or professing or exercising any of the several trades or manufactures of Ireland, for regulating the said trade, or settling the prices of goods, or for advancing their wages, or for lessening their usual hours of work, are hereby declared to be illegal and void; and if any person concerned in the said trades, &c. shall make, enter into, sign, seal, or be knowingly concerned in any contract, &c. by this act declared to be illegal, or shall attempt to put any such illegal agreement, by-law, ordinance, rule, or order, in execution, such offender, being convicted upon the oath of a witness, before 2 justices of peace for the county, &c. where such offence shall be committed, upon any information exhibited within 3 calendar months after the offence, shall, by order of such justices, be committed either to the house of correction, to be kept to hard labour for any time not exceeding 3 months, or to the common gaol of the county, &c. where such offence shall be committed, for any time not exceeding 3 months. By s. 2. if any person employed as an artificer, workman, servant, or labourer, shall depart from his service before the end of the time for which he is retained, or shall quit his work for 3 days, or return his work before the same shall be completely finished, without the consent of the person by whom he shall be employed, unless for some reasonable cause to be allowed by 2 justices of peace in their respective jurisdictions, such offender being convicted before 2 justices as aforesaid, shall forfeit £5. one half to the informer, and the other to the poor of the parish; which £5. the said justices shall levy, by their warrant, by distress and sale of the offender's goods, &c. and for want

want of sufficient distress, commit the party to the house of correction for any time not exceeding 3 months. Provided (s. 3) that if the person employing any such artificer, &c. shall not, from time to time, constantly furnish him with proper stuff and materials, and pay all wages as the same shall become due to any such artificer, &c. according to such agreement as shall be made for that purpose, (such want of materials, or non-payment of wages, being lawfully proved before 2 justices of peace) such artificer, &c. shall not be liable to the said penalties for departing from his service, or quitting or returning his work. By s. 4. it shall be lawful for the person so employing any artificer, &c. to employ any other person to finish such work as shall be so left by any artificer, &c.; and the person who shall be so employed to finish such work, (though not free of any corporation) shall not be liable to any fines or penalties imposed by any court or corporation in respect of his finishing said work: And if any dispute shall arise between any master-workman, or other person employing any such artificer, &c. about the goodness of stuff or materials, or whether the same be fit, or a sufficient quantity given for the work for which they were intended, then, upon application by either of the parties to a justice of peace, such justice shall give directions to the master and wardens of the corporation or trade of either of the said parties, and, in such places where no corporation is subsisting, to any other experienced person, to examine into the premises; and the decision by said master and wardens, or other experienced person, shall be definitive. By s. 5. in case of such disputes, if any workman shall provide stuff or materials without the consent of the employer, before the determination first had as aforesaid, it shall be lawful for such employer or master-workman to refuse payment for the same, and to plead the general issue in any action to be brought on account thereof. By s. 6. if any master-workman, or other person for him, by his direction, or with his privity, shall knowingly receive, employ, or entertain any artificer, &c. employed by another, during the time he is

s. 3.

Proviso.

s. 4.

*Persons not free of corporation may complete work unfinished.**Disputes about goodness or quantity of materials how decided.*

s. 5.

If, pending disputes, workman provides materials, master may refuse payment.

s. 6.

Penalty for employing artificer, &c. retained by another.

so employed, without leave of the person by whom he is so employed, such offender shall forfeit £5. one half to the person aggrieved, and the other half to the poor of the parish where such offence shall be committed, to be levied by distress and sale of the offender's goods, by warrant of any justice of peace within his jurisdiction; and for want of such distress, such justice shall commit such offender to the common gaol of the county, &c. where such offence shall be committed, for any time not exceeding 3 months. By s. 7. if any artificer, work-

s. 7.

Penalty for artificer, &c. wilfully damnifying goods entrusted to him.

man, servant, or labourer, hired or employed in any of the trades or manufactures of this kingdom, shall wilfully damnify, spoil, or destroy any goods, wares, or work, wherewith he shall be entrusted, such offender, and his accomplices, being convicted as aforesaid, shall forfeit to the owner, double the value thereof, to be levied by distress and sale of the offender's goods, by warrant of 2 justices of peace within their jurisdictions; and for want of sufficient distress, such justices shall commit the party to the house of correction, to be kept to hard labour for any time not exceeding 3 months, or until satisfaction be made to the party aggrieved. By s. 8.

s. 8.

Employer shall pay wages in money only.

every person employing any such artificer, &c. shall pay him the full wages or price agreed on, in lawful money of Ireland, and not in goods, or by way of truck, or in any other manner, nor make any deduction from such wages, &c. on account of any goods sold or delivered previous to such agreement by any person, or in order to pay any ale-house or tavern-scores, or other debts, without the consent of the person so hired or employed:

Payment of wages how enforced summarily.

And for the more easy recovering said wages, &c. any 2 justices of peace within their jurisdictions, shall, upon complaint, summon before them the party offending, (not being a peer or peeress of this realm) and, for non-payment of such wages, &c. or sufficient satisfaction given to the good liking of the party aggrieved, issue their warrant for levying such wages, &c. (provided the same shall not exceed £3.) by distress and sale of the offender's goods, &c. and for want of sufficient distress, commit the party offending to the common gaol of the county,

county, &c. where such offence shall be committed, until he shall pay said wages, or give full satisfaction for the same to the good liking of the party aggrieved.

Provided (s. 9.) that it shall be lawful for any person aggrieved by any order to be made by any 2 justices

s. 9.

in pursuance of this act, to appeal to the justices at the next quarter-sessions for the county, &c. where

Appeal to sessions from orders of justices under this act.

such order shall be made, giving reasonable notice of such appeal; the reasonableness of which notice shall

be determined by the justices at said quarter-sessions; and if it shall appear that reasonable notice was not

given, they shall adjourn the appeal to the next quarter-sessions, and then and there finally determine

the same; and the justices who shall hear the matter, shall have power to award reasonable costs to either

party. By s. 10. no master-workman, overseer, or undertaker of any work, who shall employ any workmen

s. 10.

or journeymen under him at daily or weekly wages, shall charge his employer with any further sum for the

Penalty for master-workman over charging employer for journey-man's wages.

wages of such workmen, &c. than what such master-workman, &c. shall, *bona fide*, pay to such workmen,

&c.; upon pain of forfeiting £10. to be recovered by civil bill. And by the 17 Geo. 2. c. 8. s. 3. Ir. all meetings

17 Geo. 2. c. 8. s. 3. Ir.

and assemblies, where 3 or more persons (not incorporated by charter) assemble or meet together, and make any

by-law or order, or give any direction relating to journey-men, or apprentices, or servants, or for the collec-

Assemblies of 3 or more, not incorporated, to make by-laws as to journey-men, &c. or collect money for their support, &c. unlawful.

tion of money for the support of journeymen who do not work at their trades, or of apprentices, or of servants

out of service, or under pretence of providing for the wives and children of such journeymen, &c. or for the

use of any member of such societies, shall be deemed unlawful assemblies; and the houses where such persons

to the number of 3 meet, shall be taken as common nuisances; and the master or mistress of such house, if

it be made appear that he or she knowingly permitted such assemblies, shall be prosecuted by presentment

or indictment for such offence; and shall be punished as those who keep common bawdy-houses are by law

punishable;

Owners of houses where such meetings held how punished.

Persons entering into contracts, &c. as to journeymen, &c. or collecting money for such clubs, how punished.

s. 4.

Justices empowered to compel attendance of witnesses.

s. 5.

Their examination not evidence against them.

s. 6.

Employers paying in any other manner than ready money, how punished.

s. 7.

Appeal to sessions.

punishable; and all persons (as well journeymen, apprentices, and servants, who receive wages, as others not incorporated by charter) who enter into any contract, covenant, or articles relating to journeymen, &c. or who shall collect or pay any money for the support of the persons meeting in such clubs or societies, being convicted before 2 justices of peace in the manner directed by the 3 Geo. 2. c. 14. *supra*, shall be punished as by said act is directed. And by s. 4. such justices shall, upon information given them against any such offender, issue summonses to witnesses; and if any person shall not appear, being duly served with such summons, he shall forfeit 40s. to the informer; to be levied by distress and sale of the offender's goods, by warrant of said justices; and in case no sufficient distress can be found, then such justices shall, by their warrant, send said offender to the common gaol, for one month, unless such offender shall sooner submit to be examined. Provided (s. 5.) that nothing said by any person who shall be examined as a witness on any such indictment, or before such justices, shall be given in evidence against such person so examined, in any information or indictment he may be charged with, or before any 2 justices, on this or the former act. By s. 6. in case any person concerned in employing any artificer, workman, servant or labourer, in any of the trades or manufactures of this kingdom, shall pay such artificer, &c. his wages, or other price agreed on, or any part thereof, either in goods, or by way of truck, or in any other manner than in ready money, and shall be convicted on the oath of one witness, before any 2 justices of peace for the county, &c. where such offence shall be committed, upon an information exhibited within 3 calendar months after such offence, and which such justices are required to take, he shall forfeit £10. to be paid to the informer, and to be levied by warrant of such justices for distress and sale of the offender's goods. But by s. 7. any person aggrieved by any order made by any 2 or more justices of peace, in relation to workmen or artificers wages, or paying in truck instead

of money, may appeal to the justices of peace assembled at the next quarter-sessions for the county, &c. where such order shall be made, who shall determine the same, and award reasonable costs to either party. And by the 29 Geo. 2. c. 12. s. 11. Ir. if any master, overseer, work-^{29 Geo. 2. c. 12. s. 11. Ir.} ing or other collier, or miner, shall enter into any unlawful combination, or shall refuse to work according ^{Colliers, miners, &c. combining or refusing to work according to articles, how punished.} to the articles entered into by him with the owner or proprietor of such colliery or mine, such master, &c. shall, over and above the penalty provided by any former act of parliament, forfeit all such money as shall be due to him from the owner of such colliery, &c. at the time of his entering into such combination, and shall be committed to the common gaol of the county where such offence is committed, for one calendar month. Provided (s. 12.) that such master, &c. be convicted on oath ^{s. 12.} before a justice of peace for the county where such offence is committed, or where such offender is found. ^{Offenders how convicted.} The 3 Geo. 3. c. 34. Ir. further enacts (s. 23.) that ^{3 Geo. 3. c. 34. s. 23. Ir.} if any person shall summon (or cause, &c.) any manufacturer, artificer, weaver, journeyman, apprentice, or labourer, usually employed in any trade or manufacture, to appear at any meeting in order to consult upon, or to enter into any rule, agreement, or combination, to ascertain or fix the price of labour or workmanship, or shall administer, (or cause, &c.) any oath or declaration to any such manufacturer, &c. tending to fix the price or wages of labour or workmanship; or shall issue, (or ^{Punishment of combinations to fix the price of labour in any branch of trade, &c. by summoning artificers, &c. to meeting, administering oaths, &c. giving tokens, &c. or hindering work.} cause, &c.) or deliver (or cause, &c.) any ticket, certificate, or token, (other than such ticket or certificate, as shall be delivered by order of the corporation whereof such manufacturer, &c. is a member) to any such manufacturer, &c. of his being licensed to work at his respective trade; or shall make or join in making any rule, order, or regulation, relating to the prices or wages of labour or workmanship in any trade or manufacture; or shall by force, menaces, or otherwise, hinder or attempt to hinder any such manufacturer, &c. to work at his trade, at such prices as he shall agree for with his employer; every such person, being convicted by the oath of one witness, or by confession, before a justice of peace, or

*Like punishment
for artificers
taking oaths, or
combining to fix
price of wages, or
not to work for a
particular em-
ployer.*

19 & 20 Geo. 3.
c. 19. s. 1. Ir.

*Combinations
amongst masters
or journeymen,
public nuisances.*

s. 2.

*Various acts
enumerated,
which are evi-
dences of unlaw-
ful combination,
and sufficient
for the convic-
tion of any per-
son.*

chief magistrate, within their jurisdictions, shall by warrant of such justice or chief magistrate, be committed to gaol for 6 months, and be 3 times publicly whipped at some public place within such jurisdiction. And by s. 24. if any such manufacturer, &c. shall take an oath, or enter into any combination or agreement to fix the price of wages, &c. or take any oath, or enter into any combination not to work for any particular master or employer, and shall be convicted by the oath of a witness, or by confession, before a justice of peace or chief magistrate, within their jurisdictions, it shall be lawful for such justice, &c. by warrant, to commit such person to gaol for 6 months, and also to order him to be 3 times publicly whipped, at some public place within such jurisdiction.

It is further declared and enacted by the 19 & 20 Geo. 3. c. 19. Ir. that all combinations in trade, as well amongst master manufacturers as amongst journeymen, are public nuisances; and that it is the duty of all sheriffs, mayors, justices of peace, constables, and other civil magistrates, and officers, to oppose and prosecute all persons concerned in the same. And by s. 2. the following acts shall be considered as evidences of unlawful combination, and sufficient for the conviction of any person who shall be guilty of the same: *viz.* the becoming or continuing to be of any club, committee, or other assembly or society for regulating the concerns of trade, or any other matter relative to the same, other than as such clubs, &c. are agreeable to law; the levying or assisting in levying, demanding or collecting any money or contributions from any master, employer, undertaker, journeyman, or other person, by authority of or for the support of any such club, &c. or for supporting any regulation made, or to be made by any such society or combination, or as a fine or penalty imposed by the same, or the seizing or taking away any implement of work or other pledge, distress, or security, for such contribution, assessment, or fine; or the compelling or attempting to compel the payment thereof by force, threat, menace, or by any punishment, or by refusing to work with, or suffer to work, any person refusing to pay such contribution, &c. or with any master employing such person; the

the restraining or attempting to restrain any person from taking any apprentice, or number of apprentices, or the refusing to work with such person, or those employing him, on that account; the preventing or attempting to prevent any native or foreigner, or any woman, from exercising any trade, or working at any branch of business, other than as they are restrained from so doing by the law of the land, or charter law of any corporation, such prevention to be made in a legal method only, and by persons qualified by law to make the same; the unlawful preventing or attempting to prevent the introduction or use of any machinery, or new instrument or implement of trade, or any new method of carrying on any work; the wilfully and maliciously destroying or injuring, or attempting to destroy or injure the manufactures, implements, materials, or stock in trade of any manufacturer, merchant, shop-keeper, or ware-house-keeper, or other person employed in trade, or the unlawful preventing or attempting to prevent such person from freely carrying any of the said articles to or from any market or place; the making by-laws or orders pretending to regulate trade, or the price of goods, or the price of labour or of wages, or for advancing the price of wages, or for lessening the usual hours of work; the entering into, continuing in, acting under, making, signing, sealing, or being knowingly concerned in any contract, covenant, or agreement, by-law, ordinance, rule or order of any club, society, or combination, by law declared to be illegal or void; the departure of any undertaker, journeyman, or apprentice, from his service, before the end of the time for which he shall be hired or retained, or quitting his work for 3 days, or returning his work before the same shall be completely finished, without the consent of the person by whom he shall be employed, unless for some reasonable cause; the summoning, giving notice of, or otherwise inviting, or causing to be summoned, &c. any artificer, manufacturer, journeyman, apprentice, labourer, or other person usually employed in any branch of trade, manufacture, or business, to appear at any meeting in order to enter into or consult on

any combination, rule, agreement, or association, to ascertain or fix the price of labour or workmanship, or to make any rule, order, or regulation, respecting any trade, &c. or the persons employed therein; the administering, or causing to be administered, any oath or declaration to any such manufacturer, &c. tending to fix the price or wages of labour or workmanship, or tending to fix upon or make any rule, &c. respecting any trade, &c. or the persons employed therein; the issuing (or causing, &c.) delivering (or causing, &c.) any ticket, certificate, or token, (other than such ticket, &c. as shall be delivered by order of the corporation whereof such person is a member) of his being licensed to work at his trade; the making or joining in making any unlawful rule, &c. relating to the prices, or wages of labour, &c. or in any particular relating to any trade, &c.; or the delivering, or causing to be delivered, to any person, any ticket, token, printed advertisement, or writing, containing any rule, regulation, or agreement, entered into or to be entered into by any artificer, journeyman, or labourer, concerning any trade, &c. or any table or general regulation of price; or the making or assisting in making or carrying into execution any such table, &c.; the hindering or attempting to hinder any manufacturer or labourer from working at his trade at such prices as shall be ascertained by law, or as he shall agree for with his employer or master, or at such work as such employer, &c. shall direct in his respective trade or calling; the corrupting or endeavouring to corrupt, or influencing or endeavouring to influence, apprentices to neglect their work, or to leave their masters, and the deterring or endeavouring to deter persons from binding any young persons under their care apprentices to any branch of business; the deterring or endeavouring to deter journeymen or others to go in the place of any others who may have turned out or left their work, or on any other account, from entering into any other manufacturer or undertaker's employment; the obstructing any apprentice from learning his trade, or from working with the journeyman

journeyman employed by the master of such apprentice; the unlawfully assembling in any number exceeding 7 persons for any purpose of combination, or carrying any such into execution, or making or enforcing any regulation relative to the same. And by s. 4. all rules, by-laws, and regulations, contrary to these provisions, and all oaths for obeying or carrying into execution the same, shall be considered as void. And the 43 Geo. 3. c. 86. I. contains several provisions nearly corresponding to the 39 & 40 Geo. 3. c. 106. Eng. *ante* p. 705. By s. 1. all contracts, covenants, and agreements, in writing or not in writing, heretofore made or entered into, or hereafter to be made, &c. by or between any artificers, journeymen, manufacturers, workmen, labourers, or other persons in Ireland, for obtaining an advance of wages of any of them, or of any other artificers, &c. in any manufacture, trade, business or occupation, or for lessening or altering their usual hours or time of working, or for decreasing the quantity of work, (save any contract between any master and his journeyman or manufacturer, on account of the work or service of such journeyman, &c.) or for preventing or hindering any person from employing whomsoever he shall think proper in his manufacture, &c. or for controlling or any way affecting any person carrying on any manufacture, &c. in the conduct or management thereof, shall be illegal and void. And by s. 2. no artificer, &c. shall make or enter into, or be concerned in making, &c. any such contract as herein-before declared to be illegal; and every artificer, &c. who shall be guilty of any of said offences, being thereof convicted before any 2 justices of peace for the county, &c. where such offence shall be committed, within 3 calendar months after the offence, shall, by order of such justices, be committed to the common gaol within their jurisdiction, for any time not exceeding 6 calendar months, or to some house of correction within the same jurisdiction, to be kept to hard labour for any time not exceeding 3 calendar months. And by s. 3. every artificer, &c. who shall enter into any combination for any purpose contrary to this act; or who

s. 4.

43 Geo. 3. c. 86.
s. 1. I.

All contracts for obtaining an advance of wages, altering time of working, decreasing quantity of work, or controlling employers, illegal and void.

s. 2. & 3.

Punishment for such offences.

who shall, by giving money, or by persuasion or intimidation, or other means, wilfully and maliciously endeavour to prevent any unhired or unemployed artificer, &c. from hiring himself to any manufacturer or tradesman, or person conducting any manufacture, &c.; or who shall, for any purpose contrary to this act, wilfully and maliciously decoy, persuade, solicit, intimidate, influence, or prevail, or attempt or endeavour to prevail on, any artificer, &c. to quit or leave his work, service, or employment; or who shall wilfully and maliciously hinder or prevent, or attempt to hinder any manufacturer, &c. from employing such artificer, &c. as he shall think proper; or who being hired or employed, shall, without any reasonable cause, refuse to work with any other artificer, &c. employed to work therein; and who shall be convicted of any of said offences before 2 justices of peace, as in s. 2. *supra*, shall be punished as in s. 2.

s. 4.

Punishment for attending meetings for the purpose of making such illegal contracts, or inducing others to attend such meetings, or collecting money for such purposes, or delivering tickets, &c.

supra. By s. 4. every person (whether employed in any such manufacture, &c. or not) who shall attend any meeting had for the purpose of making or entering into any contract, &c. by this act declared to be illegal, or of entering into, supporting, maintaining, continuing, or carrying on any combination for any purpose by this act declared to be illegal, or who shall summon, give notice to, call upon, persuade, entice, solicit, or by intimidation, or other means, endeavour to induce any artificer, &c. to attend any such meeting; or who shall collect, demand, ask, or receive any sum of money from any such artificer, &c. for any of the purposes aforesaid; or who shall persuade, &c. or endeavour to induce any such artificer, &c. to enter into or be concerned in any such combination; or who shall pay any sum of money, or make or enter into any subscription or contribution for or towards the support or encouragement of any such illegal meeting or combination; or shall administer, (or cause, &c.) any oath or declaration to any artificer, &c. tending to fix the price or wages of labour or workmanship, or tending to fix or make any rule, order, agreement, or regulation, respecting any trade, &c. or the persons employed therein; or shall issue, (or cause, &c.)

or

or deliver, (or cause, &c.) any ticket, certificate, or token, (other than such ticket, &c. as shall be delivered by the order of the corporation whereof such artificer, &c. shall be a member,) to any such artificer, &c. of his being licensed to work at his trade; and who shall be convicted of any of said offences, before 2 justices of peace as in s. 2. *supra*, shall be punished as in s. 2. *supra*.

By s. 5. no person (whether employed as a journeyman, &c. in any manufacture, &c. or not) shall wilfully pay or give any sum of money or valuable thing as a subscription or contribution for paying the expenses incurred by any person acting contrary to this act; or shall, by payment of money, or other means, support or maintain any journeyman, workman, apprentice, labourer, or other person, or contribute towards his support, &c. for the purpose of inducing him to refuse to work, or to be hired or employed in any manufacture, &c. or for the purpose of maintaining, &c. any artificer, journeyman, workman, apprentice, or labourer, who shall have been convicted of any offence under this act; and every person who shall be guilty of any such offence, shall, on conviction before any 2 justices of peace of the county, &c. where the offence shall be committed, forfeit any sum not exceeding £10.; and every person who shall collect or receive any money or valuable thing, for any of the purposes aforesaid, shall, on like conviction, forfeit any sum not exceeding £10. according to the discretion of the justices; such penalties to be equally divided between his majesty and the informer. By s. 6. if

s. 5.

Penalty for contributing or collecting money to support combi-nators.

any artificer, &c. being engaged with any master, mistress, or employer, shall, during the time for which he shall be so engaged, refuse to work, or absent himself from the service of the person by whom he shall be so employed, during the accustomed hours of working at such trade, &c. or if hired by the week, month, or year, shall neglect to come to work each day during the said term, unless prevented by sickness, or other reasonable cause, to the satisfaction of the justices before whom complaint shall be made; or shall hinder, prevent, or molest, or attempt to hinder, &c. any person from working

s. 6.

Punishment of workmen retained refusing to work, absenting themselves, preventing others from working, or returning work before completed.

ing at any business on account of said persons being foreigners, strangers, or natives of any other part of the united kingdom, or of any other county, city, or place within Ireland, or on any other account; or shall refuse or neglect to work in the trade or calling he shall be so engaged for, and in an usual and reasonable manner, being thereunto required by his employer, or shall return his work before the same shall be completely finished, without the consent of the person by whom he shall be so employed, unless it be for some sufficient cause to be allowed by 2 justices of peace in their jurisdictions, and shall be thereof convicted before any 2 justices of peace as in s. 2. *supra*,* shall be punished as in s. 2. *supra*. By s. 7. if any master-workman, or any person for him, by his direction, or with his privity, shall knowingly receive, employ, or entertain any artificer, &c. during the time such artificer shall be employed or retained by another, without leave of the person by whom such artificer, &c. shall be so employed, &c. such offender being thereof convicted before any 2 justices of peace for the county, &c. where such offence shall be committed, shall forfeit any sum not less than £5. nor more than £20.; one moiety to the person aggrieved, and the other to the trustees of Stephens's hospital in the city of Dublin, if the offence shall be committed in the county, or county of the city of Dublin, and to such public charity within the county, city, or place in which such offence shall have been committed, as the said justices shall direct, where said offence shall have been committed out of the county, or county of the city of Dublin. By s. 8. if any artificer, workman, or servant, hired or retained in any trade or manufacture, shall wilfully damnify, spoil, destroy, sell, exchange, or otherwise dispose of, against or without the consent of the owner, any of the goods, wares, or work, or materials for work, committed to his care, or wherewith he shall be entrusted, such offender, and his accomplices, being convicted before any 2 justices of peace for the county, &c. where such offence shall be committed, shall forfeit double the value of such goods,

s. 7.

*Penalty for
master employ-
ing workmen
retained by
another.*

s. 8.

*If any workman,
&c. shall spoil,
sell, &c. any
work committed
to his care, he
shall forfeit
double value.*

* The limitation of 3 calendar months for conviction, is not in this clause.

goods, &c. so damnified, &c. to the owner thereof. By s. 9. all undertakers or contractors for work shall be considered as masters in respect to all matters contained in this act, so far as relates to the journeymen, artificers, workmen, and labourers employed by them. By s. 10. if any person shall knowingly permit any persons to assemble in his house or apartments, for the purpose of unlawfully regulating the concerns of trade, or the rates of wages, or prices of work, or for any purpose contrary to this act, such person being convicted as in s. 7. *supra*, shall incur such forfeiture, and to be applied in such manner as in s. 7. *supra*. By s. 11. on complaint and information on oath, before a justice of peace, of any offence against this act, within the jurisdiction of such justices, such justice shall summon the person charged, to appear before any 2 justices for the county &c. within which the offence shall have been committed, at a certain time and place to be specified; and if any person shall not appear according to such summons, then (proof on oath having been made before them of the due service of such summons upon such person, by delivering the same to him personally, or leaving the same at his usual place of abode; provided the same shall be so left 24 hours before the time appointed to appear, and provided that the summons shall, in the case last mentioned, be delivered into the hands of some person above the age of 16 years, then resident in the usual place of such person) such 2 justices shall issue their warrant for apprehending the person so summoned and not appearing, and for bringing him before such justices; and upon the person so complained against appearing upon such summons, or being brought by virtue of such warrant before such justices, or upon proof on oath of such person absconding, so that such warrant cannot be executed, then such 2 justices shall, by the oath of any credible person, examine and determine the matter of such complaint; and upon confession by the party, or proof by one witness upon oath, (which oath either of such justices is hereby authorized to administer in such case, and in all other cases where an oath is to be taken before any justice of peace in pursuance of this act) convict

s. 9.

Who deemed masters.

s. 10.

Penalty for any person permitting such illegal meetings, in his house, &c.

s. 11.

Jurisdiction of justices in respect to offences against this act.

* These words seem to be inserted through mistake.

s. 12.

No master in the trade to act as justice.

s. 13.

Powers of justices to compel witnesses to attend and give evidence.

s. 14.

Informers competent witnesses, and offenders compellable to give evidence against others.

vict or acquit the party; and in case such penalty shall not be forthwith paid pursuant to such conviction and sentence, such 2 justices shall, by warrant, commit the offender to the common gaol within their jurisdiction, for any time not exceeding 6 calendar months, nor less than 2 calendar months, unless such forfeiture or penalty, [*or wages,] shall be sooner paid or satisfied, or to some house of correction within their jurisdiction, to be kept to hard labour for any time not exceeding 3 calendar months, unless such forfeiture, &c. shall be sooner paid. Provided (s. 12) that no justice of peace, being also a master in any particular trade, &c. in or concerning which any offence is charged to have been committed, shall act as such justice. By s. 13, the justice before whom any complaint or information shall be made as aforesaid, shall, at the request of any of the parties, issue his summons to any witness, to appear and give evidence before such justice, at a time and place to be specified in such summons; and if any person so summoned to appear as a witness, shall not appear before such justice, at the time and place specified in such summons, or offer some reasonable excuse for the default, or, appearing according to such summons, shall not submit to be examined as a witness, and give his evidence before such justice, then such justice shall, (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justice of the due service of such summons on every such person, by delivering the same to him, or by leaving the same 24 hours before the time appointed for such person to appear, at his usual place of abode) by warrant under his hand, commit such person so making default in appearing, or appearing and refusing to give evidence, to some prison within his jurisdiction, until such person shall submit to be examined before such justice. By s. 14, the informer or prosecutor shall, in every case under this act, be deemed a competent witness to prove the offence charged; and every person who shall offend against this act, shall, equally with all other persons, be compelled to give his evidence on behalf

half of his majesty, or of the prosecutor or informer, upon any information to be exhibited under this act, against any other person not being such witness; and every person having so given his testimony, shall be indemnified against any information or prosecution for having offended in the matter relative to which he shall have so given testimony. By s. 15. the justices before whom any person shall be convicted of any offence against this act, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments, to be drawn up in the form or to the effect set forth in the schedule to this act. And by s. 16. the justices before whom any such conviction shall be had, shall cause the same to be fairly written on parchment, and transmitted to the next general sessions or quarter sessions of the peace for the county, &c. wherein such conviction was had, to be filed amongst the records of said sessions. By s. 17. any person convicted of any offence punishable by this act, may appeal from such conviction to the next general sessions or quarter sessions of the peace, for the county, &c. wherein such offence was committed; and the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall, with 2 sureties, immediately enter before such justices into a bond to the king, in the penal sum of double the amount of the penalty so incurred; or in case such conviction shall contain a judgment of imprisonment, such appellant shall immediately enter into a recognizance before such justices, himself in the penalty of £20. with 2 sureties in the penalty of £10. each, (which bond or recognizance such justices are required to take); and such bond, &c. shall be conditioned to prosecute such appeal with effect, and to be forthcoming to abide the determination of the said next general sessions or quarter sessions, and to pay such costs as said court shall award; and the said justices in the said general or quarter sessions, shall determine the appeal, and award reasonable costs to be paid by either party; which decision shall be final, and

s. 15.

Forms of conviction and commitments.

s. 16.

Convictions transmitted to sessions.

s. 17.

Proceedings upon appeal to sessions.

no *certiorari*, or other writ or process, shall be allowed for removal of such proceedings into any superior court of record; and if upon hearing the said appeal, the judgment shall be affirmed, such appellant shall forthwith pay the penalty (if any,) mentioned in such conviction, and the costs awarded to be paid by such appellant; and in default of payment thereof, or in case such conviction shall contain a judgment of imprisonment, such appellant shall be committed by said court to the common gaol or house of correction, according to such conviction, for the time therein mentioned, and also until the payment of such costs as shall be awarded by said court to be paid by such appellant. By s. 18. nothing in this act shall repeal or abridge the powers now by law given to any court, or to any justices of peace, touching any combinations of artificers, &c. or for settling the rate of wages to be paid to such journeymen, &c. or the mode or time of their working or being employed, or the quantity of work to be done, or touching any matter also provided for by this act. Provided (s. 19.) that no person convicted of any offence against this act, and who shall suffer for the same accordingly, shall be otherwise punished for such offence by any other law now in force in Ireland. By s. 20. if any suit shall be commenced against any person for any thing done in pursuance of this act, such suit shall be commenced within 3 calendar months after the thing done, and shall be laid in the proper county; and the defendant may plead the general issue, &c. and shall have treble costs of verdict, nonsuit, discontinuance, or judgment. By s. 21. all sums of money in this act specified, shall be payable in Irish currency.

s. 18 & 19.

Provisoes as to former laws.

s. 20.

*Limitation of actions.**Pleading.**Costs.*

s. 21.

Penalties paid in Irish currency.

§ 9.

IX. Such statutes as relate to the offence of exercising a trade in any town, without having served a previous apprenticeship of 7 years, have been already mentioned, vol. 1. p. 393—4.

§ 10.

Persons seducing artificers or manufacturers to go into a foreign country, how punished.

X. With respect to the offence of *transporting and seducing our artists*: The 5 Geo. 1. c. 27. Eng. enacts, that if any person shall contract with, entice, endeavour to persuade, or solicit any manufacturer or artificer of
or

or in wool, iron, steel, brass, or other metal, clock-maker, watch-maker, or other artificer or manufacturer of Great Britain, to go out of this kingdom into any foreign country out of his majesty's dominions, and shall be convicted upon any indictment or information, in any of his majesty's courts at Westminster, or at the assizes or general gaol delivery, or quarter-sessions of the peace for the county, &c. where such offence shall be committed, such person shall be fined any sum not exceeding £100. for his 1st. offence, according to the discretion of the court, and shall be imprisoned for 3 months, and until such fine shall be paid; and any person so convicted a 2nd time, shall be fined at the discretion of the court, and be imprisoned for 12 months, and until such fine shall be paid. Provided (s. 2.) that no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be begun within 12 months after the offence. And by s. 3. if any of his majesty's subjects within this kingdom, being such artificer or manufacturer as aforesaid, shall go into any country out of his majesty's dominions, there to use or exercise, or to teach any of the said trades or manufactures to foreigners, or in case any of his majesty's subjects who shall be in such foreign country, and there exercising any of the said trades, &c. shall not return into this realm within 6 months after warning shall be given to him by the ambassador, envoy, resident, minister or consul of the crown of Great Britain, in the country in which such artificer shall be, or by any person authorized by such ambassador, &c. or by one of his majesty's secretaries of state, and from thenceforth continually inhabit and dwell within this realm; such person shall be from thenceforth incapable of taking any legacy that shall be devised to him within this kingdom, or of being an executor or administrator to any person within this kingdom, and shall be incapable of taking any land, &c. within this kingdom, by descent, devise, or purchase, and also forfeit all his lands, &c. within this kingdom to his majesty's use, and shall be from thenceforth deemed to be an alien, and shall be out of his majesty's protection. By s. 4. upon complaint made upon

5 Geo. 1. c. 27.
s. 1. Eng.

s. 2.

Limitation for
prosecutions.

s. 3.

Penalty for any
artificer, &c.
not returning
after warning by
ambassador, &c.

s. 4.

Justices of peace to apprehend persons seducing artificers, &c. or artificers, &c. preparing to quit the kingdom; and bind them to stand their trial.

Artificers if convicted, to give security not to quit the kingdom.

s. 5.

Prosecutions in Scotland.

23 Geo. 2. c. 13. s. 1. Eng.

Further penalties for seducing manufacturers, &c. out of the kingdom.

upon oath before any justice of peace, that any person is endeavouring to seduce or draw any such manufacturer or artificer out of his majesty's dominions, for any the purposes aforesaid, or that any such manufacturer, &c. hath contracted, promised, or is preparing to go out of his majesty's dominions for any of the purposes aforesaid, then it shall be lawful for such justice to send his warrant to bring the person so complained of before him, or some other of his majesty's justices of peace for such county, &c.; and if when such person shall be so brought before such justice, it shall appear by the oath of one witness, or by confession, that the party so complained of was guilty of any of the said offences, it shall be lawful for said justice to bind the person so charged to appear at the next assizes, general gaol-delivery, or quarter-sessions for the county, &c. where such offence shall be committed, to answer the premises, with reasonable sureties for such his appearance; and in case such person shall not give such security, then it shall be lawful for such justice to commit the person so refusing to the county gaol, there to be kept until the next assizes or quarter sessions of the county, &c. where such commitment shall be, (at the election of such justice,) and until he shall be delivered by due course of law; and in case any such artificer or manufacturer shall be convicted upon any indictment at such assizes, &c. of any such promise or contract, or preparation to go abroad beyond the seas, for any of the purposes aforesaid, then the person so convicted shall give such security to the king, not to depart out of his majesty's dominions for any of the purposes aforesaid, as such court shall think reasonable, and shall be imprisoned until such security shall be given. By s. 5. if any of the above-mentioned offences shall be committed in Scotland, the same shall be prosecuted in the court of judicary, or the circuits there. And the 23 Geo. 2. c. 13. Eng. further enacts, that if any person shall contract with, entice, persuade, or endeavour to persuade, solicit, or seduce any manufacturer, workman, or artificer, of or in *wool, mohair, cotton, or silk, or of or in any manufactures

*"Linen" here added in 25 Geo. 3. c. 17. Ir.

manufactures made up of wool, &c. or any of the said materials mixed one with another, or of or in iron, steel, brass, or any other metal, or any clock-maker, watch-maker, or other manufacturer, &c. of or in any other of the manufactures of [†Great Britain or Ireland,] to go out of this kingdom, or out of Ireland, into any foreign country not within the dominions of or belonging to the crown of Great Britain; and shall be convicted thereof upon any indictment or information in the king's bench at [†Westminster,] or by indictment at the assizes or general gaol-delivery for the county, &c. wherein such offence shall be committed, [§if such offence be committed in England, or by indictment in the court of justiciary, or any of the circuit courts in Scotland, if such offence be committed in Scotland, or by indictment or information in the king's bench at Dublin, if the offence be committed in Ireland,] such person shall, for every manufacturer, &c. so by him contracted with, &c. forfeit £500. and shall also suffer imprisonment in the common gaol of the county wherein he shall be convicted, for 12 calendar months, and until such forfeiture shall be paid; and for every further conviction, in manner aforesaid, for a subsequent offence of the same kind, shall forfeit for every person so contracted with, &c. £1000. and shall also suffer imprisonment in the common gaol of the county, &c. wherein he shall be convicted, for 2 years, and until such forfeiture shall be paid. Provided (s. 2.) that no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced within 12 calendar months after the offence. The 22 Geo. 3. c. 60. Eng. further enacts, that if any person shall contract with, entice, persuade, or endeavour to seduce or encourage any artificer or workman concerned or employed, or who shall have worked at, or been employed in printing calicoes, cottons, muslins, or linens of any sort, or in making or preparing any blocks, plates, engines, tools, or utensils for such manufactory, to go out of Great Britain, to any part beyond the seas, and shall be convicted thereof upon indictment or information in the king's bench

†“Of this kingdom” in 25 Geo. 3.c.17. Ir.

†“Dublin” in 25 Geo. 3.c.17. Ir.

§This clause not in 25 Geo. 3. c. 17. Ir.

s. 2.

Limitation for prosecutions.

22 Geo. 3 c.60. s. 1. Eng.

Penalty on persons seducing artificers employed in printing calicoes, &c. out of the kingdom.

bench at Westminster, or by indictment at the assizes or general gaol-delivery for the county or place wherein such offence shall be committed, or the offender shall live or reside, or by indictment in the court of justiciary, or any of the circuit courts in Scotland; every person so convicted shall, for every artificer so contracted with, &c. or attempted so to be, forfeit £500. and shall be committed to the common gaol for the county, &c. wherein the offender shall be convicted, for 12 calendar months, and until such forfeiture shall be paid; and in case of a subsequent offence of the same kind, shall, upon the like conviction, forfeit for every person so contracted with, &c. £1000. and shall be committed to the common gaol for 2 years, and until such forfeiture shall be paid. By s. 7. one moiety of the forfeitures shall go to the king, and the other to the person who shall sue for the same. Provided (s. 2.) that no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced within 12 calendar months after the offence. And by the 25 Geo. 3. c. 67. s. 6. Eng. if any person shall contract with, entice, persuade, or endeavour to seduce or encourage, any artificer or workman concerned or employed, or who shall have worked at, or been employed in the iron or steel manufactures in this kingdom, or in making or preparing any tools or utensils for such manufactory, to go out of Great Britain to any part beyond the seas, (except to Ireland) and shall be convicted thereof upon indictment or information in the king's bench at Westminster, or by indictment at the assizes, or general gaol-delivery, or quarter-sessions for the county or place wherein such offence shall be committed, or the offender shall live or reside, or by indictment in the court of justiciary, or any of the circuit courts in Scotland, as the case may be; he shall for every artificer so contracted with, &c. forfeit £500. and shall be committed to the common gaol for the county, &c. wherein the offender shall be convicted, for 12 calendar months, and until such forfeiture shall be paid; and in case of a subsequent offence of the same kind, he shall, upon the like conviction,

s. 7.

s. 2.

*Limitation for
prosecutions.*

25 Geo. 3. c. 67.

s. 6. Eng.

*Penalty for se-
ducing artificers
in the iron or
steel manufac-
tures to leave the
kingdom.*

tion, for every person so contracted with, &c. forfeit £1000. and be committed to gaol as aforesaid, for 2 years, and until such forfeiture shall be paid. Provided (s. 7.) s. 7. that no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced Limitation for prosecutions. within 12 calendar months after such offence. By s. 8. s. 8. the penalties herein-mentioned shall be recovered by action of debt, &c. in any court of record at Westminster, or in the court of exchequer, or court of session in Penalties how recovered and applied. Scotland, in the name of the attorney general, or lord advocate, or in the name of some officer of the customs in Great Britain; and one moiety of said penalties shall go to the king, and the other to such officer of the customs as shall sue for the same, after deducting the charges of prosecution. The 25 Geo. 3. c. 17. Ir. has 25 Geo. 3. c. 17. Ir. followed the 23 Geo. 2. c. 13. Eng. *supra*, with such deviations as are noted in the margin. But the other English statutes relative to this offence have not been adopted in Ireland. The 23 Geo. 2. c. 13. 14 Geo. 3. Statutes prohibiting the exportation of tools. c. 71. 15 Geo. 3. c. 5. 21 Geo. 3. c. 37. 22 Geo. 3. c. 60. 25 Geo. 3. c. 67. 26. Geo. 3. c. 89. and 35 Geo. 3. c. 38. English, and the 17 & 18 Geo. 3. c. 21. 21 & 22 Geo. 3. c. 9. 25 Geo. 3. c. 17. and 31 Geo. 3. c. 23. Irish, contain also several provisions, prohibiting the exportation of tools and utensils in several branches of trade and manufacture.

CHAP. X.

Of Offences against the Public Health, and the Public Police or Economy.

BY the 1 Jac. 1. c. 31. s. 7. Eng. if any person § 1. infected, or being or dwelling in any house infected, Infected persons not keeping their house, when punished as felons, when as vagabonds. shall be by the mayor, bailiffs, constable, or other head officer of any city, borough, town corporate, privileged place, or market-town, or by any justice of peace, 1 Jac. 1. c. 31. s. 7. Eng. constable,

constable, head borough, or other officer of the county, (if such infection be out of any city, &c.) commanded or appointed to keep his house, for avoiding of further infection, and shall wilfully and contemptuously disobey such direction, offering and attempting to break out and go abroad, and to resist, or going abroad and resisting such keepers or watchmen as shall be appointed to see him kept in; then it shall be lawful for such watchmen, with violence, to enforce him to keep his house; and if any hurt come by such enforcement, the said keepers, watchmen, and their assistants, shall not be impeached therefore: And if any infected person, so commanded to keep house, shall wilfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, such person shall be deemed a felon, and suffer death as in cases of felony: But if such person shall not have any such sore found about him, then he shall be punished as a vagabond ought to be by the 39 Eliz. c. 4. and further be bound to his good behaviour for one year.

Provided (s. 8.) that no attainder of felony by this act, shall extend to any corruption of blood, or forfeiture of goods, &c. lands, &c.. No statute similar to this has been made in Ireland. The 45 Geo. 3. c. 10. G. B. (which supersedes all former acts relative to the performance of quarantine by ships coming from infected countries,) by s. 13. prescribes several regulations for ships or vessels in which the plague or other infectious disease or distemper shall appear, whether within or without the streights of Gibraltar, before such time as the lazaret at Chetney-Hill shall be completed, and enacts, that the commander, master, or other person on board such ship, &c. who shall not act conformably to the said provisions and regulations, or shall act in disobedience to such directions as shall be received on board such ship, &c. from the lords or others of the privy council, or any three or more of them, shall be guilty of felony without benefit of clergy. And by s. 19. enacts, that in case any ship or vessel shall come from or shall have touched at any place infected by the plague,

s. 8.

*Proviso.*45 Geo. 3. c. 10.
s. 13. G. B.*Persons disobey-
ing quarantine
orders, guilty of
a capital felony.*

s. 19.

plague, or other infectious disease or distemper, or shall have any person on board infected with the plague, &c. and the commander, master, or other person having charge of such ship, &c. knowing that the place from whence he came, or at which he had touched, was infected with the plague, &c. or knowing some person on board to be infected with the plague, &c. shall refuse or omit to disclose the same upon such examination as herein mentioned, (s. 18.) or shall wilfully omit to hoist the signal herein directed (s. 14.) (to denote that his ship, &c. is liable to the performance of quarantine) at the times and on the occasions herein directed, such commander, &c. shall be guilty of felony without benefit of clergy. And by s. 21. if any commander, master, or other person having charge of any ship, &c. liable to perform quarantine, and on board of which the plague or other infectious disease shall not have appeared, shall himself quit, or shall knowingly permit any seaman or passenger coming in such ship, &c. to quit such ship, &c. by going on shore, or by going on board any other ship, &c. before such quarantine shall be fully performed, unless in such cases and by such license as shall be directed and granted, and by virtue of such order to be made concerning quarantine as herein-mentioned; or in case any commander, &c. shall not, within a convenient time after due notice given for that purpose, cause such ship, &c. and the lading thereof, to be conveyed into the place appointed for such ship, &c. to perform their quarantine, then such commander, &c. shall forfeit £500.; and if any person coming in any ship, &c. liable to perform quarantine, (or any pilot or other person going on board the same, either before or after the arrival of such ship, &c. at any port or place in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man,) shall, either before or after such arrival, quit such ship, &c. by going on shore in any port or place in Great Britain, or the islands aforesaid, or by going on board any other ship, &c. with intent to go on shore, before such ship, &c. so liable to quarantine, shall be discharged from the performance thereof, it shall be lawful for all persons, by

Masters of vessels that have touched at infected places, &c. not disclosing the same, nor hoisting the signal prescribed, guilty of a capital felony.

s. 21.

Penalty on masters, &c. quitting vessels, or permitting others to quit them, or not conveying vessels to appointed places.

Penalty for persons coming in such vessels, or going on board, quitting them before discharged

Persons refusing, &c. to repair to lazarets, &c. or escaping therefrom, guilty of a capital felony.

s. 23.

any necessary force, to compel such pilot or person to return on board the same; and every such pilot or person so quitting such ship, &c. shall suffer imprisonment for 6 months, and forfeit £200. And by s. 23. if any person liable to perform quarantine, or any person having had any intercourse or communication with him, shall wilfully refuse or neglect to repair forthwith (when required so to do by the superintendant of quarantine or his assistants, or principal officer of the customs of any port or place where there is no such superintendant, &c. or any other officer of customs authorized to act in that behalf,) to the lazaret, ship, vessel, or place, duly appointed in that behalf; or having been placed in the said lazaret, &c. shall escape or attempt to escape out of the same before quarantine duly performed; it shall be lawful for the said quarantine officers, and also the watchmen and other persons appointed to see quarantine performed, by such necessary force as the case shall require, to compel every person so refusing or neglecting as aforesaid, and every person so escaping or attempting to escape, to repair or return to such lazaret, &c. and every person so refusing or neglecting to repair forthwith as aforesaid, to the said lazaret, &c. and also every person actually escaping as aforesaid, shall be guilty of felony without benefit of clergy. By s. 26. if any officer

Quarantine officers deserting their duty, or permitting persons, &c. to depart without due authority, or giving false certificates, guilty of a capital felony.

s. 26.

or person to whom it doth appertain to execute any order concerning quarantine, or the prevention of infection, and notified as herein-mentioned, or to see the same put in execution, shall desert from his duty, or shall knowingly and willingly permit any person, ship, vessel, goods, or merchandize, to depart or be conveyed out of the said lazaret, &c. unless under an order of his majesty with the advice of his privy council, or under an order of 3 or more of the privy council, or if any person hereby authorized to give a certificate of a ship having duly performed quarantine or airing, shall knowingly give a false certificate thereof, such offender shall be guilty of felony without benefit of clergy. And by

s. 27.

s. 27. if any person not infected with the plague, &c. nor liable to perform quarantine, shall enter the said lazaret,

lazaret, &c. whilst any person infected with the plague, or being under quarantine, shall be therein, such person shall perform quarantine there, and if he shall return or attempt to return from thence, unless by order of his majesty in council, or of any 3 or more of the privy council, it shall be lawful for the quarantine officers, watchmen, and other persons appointed to guard the said lazaret, &c. by such necessary force as the case shall require, to compel such persons to repair to said lazaret, &c. to perform quarantine; and in case such person shall escape out of such lazaret, &c. he shall be guilty of felony without benefit of clergy. By s. 31. if any person shall land or unship, or move in order to the landing thereof, any goods, letters or articles from on board any ship, &c. liable to perform quarantine, or shall knowingly receive the same after they have been so landed, he shall forfeit a sum not exceeding £500. nor less than £100.; and if any person shall, clandestinely, convey, or secrete, or conceal for the purpose of conveying, any letters or articles from any ship, &c. performing quarantine, or from the lazaret or other place where such articles shall be performing quarantine, he shall be guilty of felony without benefit of clergy. By s. 34. all penalties aforesaid shall be recovered by suit in any court of record at Westminster, or in Scotland, by summary action in the court of session, or prosecution before the court of justiciary there, or by suit in any of his majesty's courts in the islands of Guernsey, &c.; and one moiety of such forfeitures shall belong to the person who shall inform and sue for the same, and the other moiety to the king, towards defraying the expenses of erecting and maintaining the lazaret herein-mentioned. By s. 35. all actions, &c. for penalties shall be commenced, &c. in the name of his majesty's attorney general in England, or advocate in Scotland, or in the name of some officer of the customs in England or Scotland. And by s. 36. it shall be lawful for the attorney general in England, or advocate in Scotland, to stop all further proceedings therein. By s. 33. the publication in the London Gazette of any order

Persons, not infected, entering lazarets, &c. shall perform quarantine: and escaping therefrom guilty of a capital felony.

s. 31.

Penalty on persons landing goods, &c. from vessels liable to quarantine, or receiving them.

Persons clandestinely conveying or secreting them, guilty of a capital felony.

s. 34.

Penalties how recovered.

s. 35.

In whose name suits to be.

s. 36.

Proviso.

s. 33.

*Publication in
gazette to be
notice of orders
in council.*

s. 40.

*Answers of per-
sons having
charge of vessels
how far evi-
dence.*

*Quarantine or-
der prima fa-
cie evidence of
vessel being
liable thereto.*

*Vessels actually
performing
quarantine to be
deemed liable
thereto.*

s. 41.

*Proceeding to
enforce the ap-
pearance and
plea of party to
indictment for
breach of quar-
antine laws and
orders.*

order in council, or of any order by 3 or more of the privy council made in pursuance of this act, or of his majesty's proclamation, made in pursuance of the same, shall be sufficient notice of all matters therein contained.

And by s. 40. in any prosecution, suit, or other proceeding against any person, for any offence against this act, or any act hereafter to be passed concerning quarantine, or for breach of any order made by the king in council concerning quarantine, and notified as aforesaid, or of any order made by 3 or more of the privy council, the answer of the commander or other person having the charge of any ship or vessel, to any questions or interrogatories put to him in pursuance of this act, or other act, or such order as aforesaid, shall be evidence as to the place from which such ship, &c. came, or the place at which such ship, &c. touched in the course of her voyage; and where any ship, &c. shall have been directed to perform quarantine by the superintendant of quarantine or his assistant, or, where there is no superintendant, &c. by the principal officer of the customs at the port or place, or other officer of the customs authorized in that behalf, the having been so directed to perform quarantine, shall be evidence that such ship, &c. was liable to quarantine, unless satisfactory proof shall be produced to shew that the ship, &c. did not come from or touch at such place as is stated in said answer, or that such ship, &c. although directed to perform quarantine, was not liable to the performance thereof; and where any ship, &c. shall have been put under quarantine as aforesaid, and shall be performing the same, such ship, &c. shall in any such prosecution, &c. be deemed to be liable to quarantine, without proving in what manner, or from what circumstances, such ship, &c. became liable to the performance thereof. By s. 41. when any person shall be charged with any offence against this act, or any act hereafter to be passed concerning quarantine, or with breach of any order of the king in council, or of any order of 3 or more of the privy council, and the same shall be made appear to any judge of the king's bench, by affidavit or certificate,
of

of an indictment or information being filed against such person for such offence, it shall be lawful for such judge to issue his warrant, under his hand and seal, and thereby to cause such person to be brought before him, or some other judge of said court, or before a justice of peace, to be bound with 2 sureties in such sum as in said warrant shall be expressed, with condition to appear in said court at the time mentioned in such warrant, and to answer all indictments or informations for any of the offences aforesaid; and in case such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice to commit such person to the common gaol of the county, &c. where the offence shall have been committed, or where he shall have been so apprehended, until he shall become bound as aforesaid, or be discharged by the king's bench in term time, or by one of the judges of said court in vacation; and the recognizance to be taken thereupon shall be returned and filed in said court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction shall have received judgment for the same, unless sooner ordered by the court to be discharged; and where any person, by virtue of such warrant and commitment as aforesaid, shall be detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information, to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person shall be detained, with a notice thereon indorsed, that unless such person shall, within 8 days from the delivery of such copy, cause an appearance, and also a plea or demurrer, to be entered in the said court to such indictment, &c. an appearance, and the plea of not guilty, will be entered thereto, in the name of such person; and in case he shall, for 8 days after the delivery of such copy, neglect to cause an appearance, and also a plea or demurrer to be entered, it shall be lawful for the prosecutor, upon an affidavit being made and filed in said court, of a delivery of a copy of such indictment, &c. with such notice indorsed thereon

as

as aforesaid, to such person, or to such gaoler, &c. as the case may be, (which affidavit may be made before any judge or commissioner of said court authorized to take affidavits in said court) to cause an appearance, and the plea of not guilty, to be entered for such person; and such proceedings shall be had thereon, as if such defendant had appeared and pleaded not guilty; and if upon the trial of such indictment, &c. the defendant shall be acquitted of all the offences charged upon him, it shall be lawful for the judge before whom the trial shall be had, although he may not be one of the judges of the king's bench, to order that such defendant shall be forthwith discharged out of custody, as to such commitment. By s. 42. all offences committed in violation of this act, or any other to be passed, or of any order of the king in council, concerning quarantine, and the prevention of infection, and notified by proclamation, or published in the London Gazette, or of any order made by 3 or more of the privy council, whether said offence shall be committed within the body of any county, or upon the high seas, or elsewhere, shall and may be tried in any county within England or Scotland, or in the proper courts of Guernsey, Jersey, Alderney, Sark, or Man. By s. 39. no attainder of felony by virtue of this act, shall work any corruption of blood, or forfeiture of any goods, &c. lands, &c. And by s. 43. if any suit shall be commenced for any thing done in pursuance of this act, or of any order of council made by virtue thereof, the defendant may plead the general issue, &c. and shall recover treble costs of nonsuit, discontinuance, or judgment upon verdict or demurrer: and no such suit shall be brought, but within 2 months after such thing shall have been done.

s. 42.

Where offences may be tried.

s. 39

No attainder of felony to work corruption of blood, &c.

s. 43.

*Pleading.**Limitation.**Costs.**Masters of vessels coming from infected places, or having infected persons on board, and concealing the same, guilty of a capital felony.*

The 40 Geo. 3. c. 79. Ir. contains also several provisions for preventing the plague and other distempers being brought into Ireland, and empowering the lord lieutenant and council of Ireland, to make rules and directions concerning quarantine, and the preventing of infection, which shall be notified by proclamation. And enacts (s. 3.) that in case any ship or vessel shall come from

from any place visited with the plague, or have any person on board actually infected, and the commander, master, or other person having charge of such ship, &c. shall conceal the same, such commander, &c. shall be guilty of felony without benefit of clergy. And by s. 4. if any commander, master, or other person having charge of any ship, &c. liable to perform quarantine, having notice thereof, shall himself quit, or shall knowingly permit any seaman or passenger coming in such ship, &c. to quit such ship, &c. by going on shore, or by going on board any other ship, boat, or vessel, before such quarantine shall be fully performed, unless in such cases, and by such license, as shall be directed or permitted by such order made concerning quarantine, and notified as aforesaid; or in case any commander, &c. shall not, within convenient time after due notice given for that purpose by the proper officer, cause such ship, &c. and the lading thereof, to be conveyed into the place appointed for such ship, &c. to perform quarantine; such commander, &c. shall forfeit £500. one moiety to the king, and the other to him who shall sue for the same; and if any person shall so quit such ship, &c. contrary to this act, it shall be lawful for all persons by force or violence to compel such person to return on board, and every person so quitting such ship, &c. shall suffer imprisonment for 6 months, and shall also forfeit £200. one moiety to the king, and the other to him who will sue for the same. By s. 7. if any person who may be obliged to perform quarantine as aforesaid, shall wilfully refuse or neglect to repair, within convenient time after due notice for that purpose given to him by the proper officer, to the ship, house, lazaret, or other place, duly appointed for him, or having been placed in such ship, &c. shall escape, or attempt to escape out of the same before quarantine be fully performed, it shall be lawful for the watchmen and other persons appointed to see quarantine performed, by any violence that the case shall require, to compel every such person to repair or return into such ship, &c.; and every person so refusing or neglecting to repair, within convenient

40 Geo.3. c.79.
s. 3. 1r.

s. 4.

Penalty on masters quitting, or suffering others to quit vessels liable to quarantine, or not conveying ships, &c. to places appointed.

Penalty on persons quitting such ships, &c.

s. 7.

Persons who refuse, &c. to perform quarantine, in places appointed, or who escape or attempt to escape from such places, guilty of a capital felony.

Persons not infected, who enter places appointed for quarantine, shall perform quarantine; and escaping therefrom, a capital felony.

s. 9.

nient time after such notice as aforesaid, into such ship, &c. and every person actually escaping as aforesaid, shall be guilty of felony without benefit of clergy. And by s. 9. if any person not infected with the plague, nor liable to perform quarantine, shall enter any ship, house, lazaret, or other place so appointed as aforesaid, whilst any person infected with the plague, or being under quarantine, or under order to perform quarantine, shall be therein, and shall return, or attempt to return thence, unless in such cases, and by such license as shall be directed or permitted by such order made and notified as aforesaid, it shall be lawful for the watchmen or other persons appointed to guard such ship, &c. by any violence that the case shall require, to compel such person to repair into such ship, &c. there to continue and perform quarantine; and in case such person shall actually escape out of such ship, &c. before he shall have fully performed quarantine, he shall be guilty of felony without benefit of clergy. By s. 16. if any officer or other person appointed to see quarantine duly performed, or

Quarantine officers deserting their duty, or suffering persons &c. to depart, or goods, &c. to be conveyed, without orders, or giving a false certificate, guilty of a capital felony.

s. 16.

any person placed as a watchman, upon any ship, house, lazaret, or other place for performance of quarantine, in pursuance of this act, shall desert from his duty; or shall knowingly and wilfully permit any such person, ship, or vessel, to depart, or any goods or merchandizes to be conveyed out of any ship, house, lazaret, or other place appointed for performance of quarantine, unless in such cases, and by such license, as shall be directed or permitted by some order made, and notified by proclamation as aforesaid; or if any person directed as herein mentioned, to give a certificate of a ship having duly performed quarantine, or airing, shall knowingly give a false certificate, then such officer, &c. shall be guilty of felony without benefit of clergy. And by s. 17.

s. 17.

Persons who conceal from officers, or convey goods, &c. clandestinely, guilty of a capital felony.

if any person shall knowingly and wilfully conceal from the officers of quarantine, or shall clandestinely convey any letters, goods, wares, or merchandizes, from any ship under quarantine, or liable to perform quarantine by any order to be made as aforesaid, or from any lazaret or other place where goods shall be performing quarantine,

quarantine, such offender shall be guilty of felony without benefit of clergy. By s. 19. as often as the lord lieutenant shall make any order concerning quarantine and the prevention of infection, and notify the same by proclamation, such proclamation shall be publicly read upon the next Sunday after the receipt of the same, and the first Sunday in every month afterwards, during the time such order shall continue in force, immediately after the prayers, in all parish churches, and other places set apart for divine worship, within such counties and places as shall be specified for that purpose in such proclamation. By s. 20. it shall not be necessary to give any actual notice of any order of the lord lieutenant and privy council, or of any regulations therein contained, which are now or hereafter may be in force respecting quarantine; and it shall be lawful for the lord lieutenant, with the advice of the privy council, by any order to be made, to limit a time after which the publication of such order in the Dublin Gazette, shall be deemed to be sufficient notice of such order. By s. 22. every penalty which shall be incurred by any breach of this act, or of any order of the lord lieutenant in council, now or hereafter to be made concerning quarantine, and notified by proclamation, or published in the Dublin Gazette, shall be recovered by action of debt, &c. in any court of record at Dublin, one moiety to the king, and the other to him who shall sue for the same. By s. 23. if any suit shall be commenced for any thing done in pursuance of this act, the defendant may plead the general issue, &c. and shall recover treble costs of nonsuit, discontinuance, or judgment upon verdict or demurrer. By s. 24. no attainder of felony by virtue of this act shall work corruption of blood, or forfeiture of goods, &c. lands, &c.

II. Next as to the offence of *selling unwholesome provisions*: By the 51 Hen. 3. st. 6. E. & I. the jury or inquest hereby established were directed (*inter alia*) to inquire if any butcher do sell contagious flesh, or that died of the murrain. And also of cooks that seeth flesh or fish with bread or water, or any otherwise, that is not wholesome for man's body, or after they have kept it

s. 19.

Proclamations published in churches, &c.

s. 20.

What shall be deemed notice of quarantine orders.

s. 22.

How penalties shall be recovered.

s. 23.

*Pleading.**Costs.*

s. 24.

Blood not corrupted.

§ 2.

Penalty for selling unwholesome provisions.

51 Hen. 3. st. 6. E. & I.

Stat. incert.
temp.

it so long that it loseth its natural wholesomness, and then seeth it again, and sell it. And by an ordinance *incerti temporis*, a butcher that selleth swines' flesh meazled, or flesh dead of the murrain, after he be convict thereof, shall for the 1st time be grievously amerced, the 2nd time he shall suffer judgment of the pillory, and the 3rd time he shall be imprisoned and make fine, and the 4th time he shall forswear the town. And in like manner shall it be done with cooks that offend. And

12 Car. 2. c. 25.
s. 11. Eng.

Penalty for sel-
ling adulterated
wine.

* "nor milk"
here added in
17 & 18 Car. 2.
c. 19. Ir.

+ "£20." in
17 & 18 Car. 2.
c. 19. Ir.

+ "£10." in
17 & 18 Car. 2.
c. 19. Ir.

Statutes re-
straining the
adulteration of
beer and bread.

by the 12 Car. 2. c. 25. s. 11. Eng. no merchant, vintner, wine-cooper, or other person selling or retailing any wine, shall mingle or utter any Spanish wine mingled with any French wine, or Rhenish wine, cider, perry, honey, sugar, syrups of sugar, molasses, or any other syrups, nor put in any isinglass, brimstone, lime, raisins, juice of raisins, water, nor any other liquor or ingredients, nor any clary or other herb, nor any sort of flesh;* and no merchant, &c. shall mingle or utter any French wines mingled with any Rhenish wines or Spanish wines, cider, perry, stummed wine, vitriol, honey, &c. *ut supra*; and no merchant, &c. *ut supra*, shall mingle or utter any Rhenish wine mingled with any French wines or Spanish wines, cider, perry, stummed wine, vitriol, honey, &c.; and every merchant, wine-cooper, or other person selling any wines in gross, mingled or abused as aforesaid, shall forfeit £100.;† and every vintner, or other person selling any wine by retail, mingled or abused, shall forfeit, £40.;‡ one moiety to the king, and the other to the informer, to be recovered in any court of record by action of debt, &c. The 17 & 18 Car. 2. c. 19. Ir. contains a similar clause. The 1 W. & M. st. 1. c. 24. Eng. 10 & 11 W. 3. c. 21. Eng. 9 Ann. c. 12. Eng. and 12 Ann. st. 1. c. 2. Eng. prohibit, under certain penalties, the using several undue mixtures, or unwholesome ingredients in the brewing, making, or working of ale or beer. And the 31 Geo. 2. c. 29. Eng. 3 Geo. 3. c. 11. Eng. 36 Geo. 3. c. 22. Eng. and 41 Geo. 3. c. 12. G. B. contain also several provisions for restraining the adulteration of bread, or

or of any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale.

III. With respect to the offence of *clandestine marriages*: The 26 Geo. 2. c. 33. Eng. (the other clauses of which have been stated vol. 1. p. 404. to 410.) enacts (s. 8.) that if any person shall solemnize matrimony in any other place than a church or public chapel, where banns have been usually published, unless by special license from the archbishop of Canterbury; or shall solemnize matrimony without publication of banns, unless license of marriage be first had from some person having authority to grant the same, every person knowingly and wilfully so offending, shall be guilty of felony, and be transported for 14 years. Provided (s. 9.) that all prosecutions for such felony, shall be commenced within 3 years after the offence committed. And by s. 16. if any person with intent to elude the force of this act, knowingly and wilfully insert, or cause to be inserted in the register book of any parish or chapelry, (which by s. 14 & 15. are required to be kept) any false entry of any matter relating to any marriage; or falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, &c. or act or assist in falsely making, &c. any such entry in such register; or any such license of marriage as aforesaid; or utter or publish as true any such false, altered, forged, or counterfeited register as aforesaid, or a copy thereof, or any such false, &c. license, knowing such register or license respectively to be false, &c.; or if any person shall wilfully destroy, or cause or procure to be destroyed any register-book of marriages, or any part thereof, with intent to avoid any marriage, or to subject any person to any of the penalties of this act; such offender shall be guilty of felony without benefit of clergy. There is no statute in Ireland similar to this Marriage Act. But the 6 Ann. c. 16. s. 6. Ir. enacts, that if any popish priest shall celebrate matrimony between any persons, knowing, at the time of such marriage, them, or either of them, to be of the protestant religion, he shall be deemed a popish regular, and suffer the pains and penalties of a popish regular; any thing in the 2 Ann.

§ 3.

Clandestine marriages, how punished.

26 Geo. 3. c. 33. s. 8. Eng.

s. 9.

Limitation for prosecutions.

s. 16.

Forging, &c. marriage registers, how punished.

6 Ann. c. 16. s. 6. Ir.

Popish priest celebrating the marriage of a protestant, how punished.

c. 7.

12 Geo. 1. c. 3. c. 7. Ir. (*ante* p. 423.5.) notwithstanding. But the 12 Geo. Ir.

Popish priests, degraded clergy, men, or laymen, &c. celebrating such marriages, guilty of a capital felony.

s. 2.

Jurisdiction of justices of peace in respect thereto

1. c. 3. Ir. further enacts, that if any popish priest, or reputed popish priest, or person pretending to be a popish priest, or any degraded clergyman, or any layman pretending to be a clergyman of the church of Ireland, as by law established, shall celebrate, or take upon him to celebrate, any marriage between two protestants, or reputed protestants, or between a protestant or reputed protestant and a papist, such popish priest, &c. shall be guilty of felony without benefit of clergy. And by s. 2. it shall be lawful for any 2 justices of peace, in their respective counties, by their warrant directed to any constable, to summon any person suspected to be married by such popish priest, or degraded clergyman, or layman pretending to be a clergyman of the church of Ireland, or to have been present at the celebration of such marriage, to appear before such justices at the time and place in such warrant mentioned, not being more than 10 miles distant from his usual place of abode, and to examine such person upon oath, where, and by what person, and with what form and ceremonies such marriage was celebrated, and what religion the person so married professed, and who were present at such marriage: and if the person so summoned shall neglect or refuse to appear according to such summons, or shall refuse to be examined as aforesaid, or after examination shall refuse to enter into a recognizance to prosecute at the next assizes, such person as shall appear by such examination to have offended contrary to this act, or who shall refuse or neglect to appear, having no lawful impediment, or refusing to be examined and answer, or after examination refusing to enter into recognizance as aforesaid, shall be committed by said justices to the common gaol of said county, for 3 years, unless he shall sooner submit to be examined before said justices of peace, or one of them, or in case of their absence or refusal, before some other justice of peace for said county; and shall enter into a recognizance to appear at the next general assizes for the county where the offence was committed, to prosecute such person as shall appear

appear by such examination to have offended contrary to this act; in which case it shall be lawful for such justice, by warrant directed to the keeper of said gaol, to discharge such person. Provided (s. 3.) that no such examination shall subject the party examined to any prosecution or penalty, or be admitted in evidence against the person so examined, unless such person shall be indicted for wilful perjury in such examination. And the 23 Geo. 2. c. 10. s. 3. Ir. further enacts, that every popish priest or reputed popish priest, who shall celebrate any marriage contrary to the 12 Geo. 1. c. 3. *supra*, shall be guilty of felony without benefit of clergy, although such marriage be declared void by the 19 Geo. 2. c. 13. *ante* vol. 1. p. 410. But the clause of the 33 Geo. 3. c. 21. Ir. (already stated vol. 1. p. 410.) is to be here also referred to, which provides, that every popish priest, or reputed popish priest, who shall celebrate any marriage between two protestants, or between any person who hath been, or professed himself to be, a protestant within 12 months before such marriage, unless such protestant and papist shall have been first married by a clergyman of the protestant religion, shall forfeit £500. to the king upon conviction thereof. It seems however that this act is but a qualified repeal of the more penal statutes above mentioned: such priests only being entitled to the benefits of this relaxing act, as shall take and subscribe the oaths and declaration hereby prescribed.

s. 3.

*Proviso.*23 Geo. 2. c. 10.
s. 3. Ir.*Popish priest
marrying con-
trary to the 12
Geo. 1. supra,
guilty capitally
though marriage
void.*23 Geo. 3. c. 21.
s. 12. Ir.*Popish priest
celebrating the
marriage of a
protestant, un-
less first cele-
brated by a pro-
testant clergy-
man, to forfeit
£500.*

IV. The offence of *bigamy*, (or rather *polygamy*) is restrained by the 1 Jac. 1. c. 11. Eng. which recites, that divers evil disposed persons being married, run out of one county into another, or into places where they are not known, and there become to be married, to the great dishonour of God, and utter undoing of divers honest men's children, and others; and therefore enacts, that if any person [†within England and Wales,] being married, do marry any person, the former husband or wife being alive, such offence shall be felony; and such offender

§ 4.

*Felony to marry
a second hus-
band or wife,
the former being
living.*1 Jac. 1. c. 11,
s. 1. Eng.

* "Other of his majesty's dominions into Ireland," here added in 10 Car. 1. st. 2. c. 21. Ir.

† No such words in 10 Car. 1. st. 2. c. 21. Ir.

offender shall suffer death as in cases of felony; and shall receive such proceeding, trial, and execution, in such county where such person shall be apprehended, as if the offence had been there committed. Provided (s. 2.) that this act shall not extend to any person whose husband or wife shall be continually remaining beyond the seas for 7 years together, or whose husband or wife shall absent him or herself, the one from the other, for 7 years together, in any parts within his majesty's dominions, the one of them not knowing the other to be living within that time. And by s. 3. this act shall not extend to any person that shall be, at the time of such marriage, divorced by any sentence in the ecclesiastical court; or to any person where the former marriage shall be by sentence in the ecclesiastical court declared void; nor to any person for any former marriage had within age of consent. By s. 4. no attainder for this felony by this act, shall work any corruption of blood, loss of dower, or disherison of heirs. And for rendering this act more effectual, the 35 Geo. 3. c. 67. Eng. enacts, that if any person within England and Wales, being married, do marry any person, the former husband or wife being alive, and shall be convicted thereof under the 1 Jac. 1. c. 11. *supra*, he shall be subject to the same punishment as, by the laws now in force, persons are liable to, who are convicted of grand or petit larceny. And by s. 2. if any person who shall be ordered to be transported by virtue of this act, shall afterwards be at large within Great Britain, without some lawful cause, before the expiration of the term for which such person shall be ordered to be transported, such person shall be guilty of felony without benefit of clergy. And by s. 3. such person so ordered to be transported as aforesaid, and afterwards found at large within Great Britain, may be tried for such offence either in the county where such person was convicted and ordered to be transported, or in such county where such person shall be apprehended, (such county being within England or Wales); and in such latter case, the clerk or other person having the custody of the records of the court by which such person

was

s. 2.

*Proviso for case
of 7 years ab-
sence.*

s. 3.

*Proviso for cases
of divorce.*

s. 4.

*No corruption of
blood, &c.*

*35 Geo. 3. c. 67.
s. 1. Eng.*

*Like punish-
ment for biga-
my, as for lar-
ceny.*

s. 2.

*Returning from
transportation a
capital felony.*

s. 3.

*Offenders where
tried.*

was ordered to be transported, shall certify a transcript briefly containing the tenor and effect of the record of the indictment, verdict, and judgment, against such person; which certificate being produced to the court before whom such person shall stand on his trial, shall be evidence of the indictment, verdict, and judgment, contained in such record. The 10 Car. 1. st. 2. c. 21. 10 Car. 1. st. 2. c. 21. Ir. Ir. is a corresponding statute to the 1 Jac. 1. c. 11. *supra*: c. 21. Ir. But no statute has been passed in Ireland similar to the 35 Geo. 3. c. 67. *supra*. The 12 Geo. 1. c. 3. s. 5. Ir. 12 Geo. 1. c. 3. s. 5. Ir. however enacts, that if any person convicted of such offence (of marrying, the former husband or wife being alive,) shall claim the benefit of clergy, or of the statute, and such claim shall be by the court allowed, such person, instead of being burned in the hand, shall, by the court, be ordered to be transported for 14 years, as persons convicted of a capital felony are. Convicts of bigamy transported.

V. By the 39 Eliz. c. 17. Eng. all *idle and wandering soldiers or mariners*, or idle persons which shall be wandering as soldiers or mariners, shall settle themselves in some service, labour, or other lawful course of life, without wandering, or otherwise repair to the places where they were born, or to their dwelling places, if they have any, and there remain betaking themselves to some lawful trade or course of life, upon pain of being reputed and suffering as felons without benefit of clergy. § 5. Wandering soldiers or mariners &c. guilty of a capital felony. 39 Eliz. c. 17. s. 1 & 2. Eng. And by s. 3. every idle and wandering soldier or mariner which coming from his captain from the seas, or from beyond the seas, shall not have a testimonial under the hand of some justice of peace of or near the place where he landed, setting down therein the time and place when and where he landed, and the place of his dwelling or birth, unto which he is to pass, and a convenient time therein limited for his passage, or, having such testimonial, shall wilfully exceed the time therein limited above 14 days: And every idle and wandering soldier or mariner, or idle person wandering as a soldier or mariner, who shall forge or counterfeit any such testimonial, or have any such testimonial forged, &c. knowing the same to be forged, &c. shall be guilty of felony without benefit of clergy. s. 3. If time limited in testimonial be exceeded by 14 days, a capital felony. Or to forge testimonials.

s. 4.

*Offences where
inquirable.*

clergy. And by s. 4. it shall be lawful for the justices of assizes and gaol delivery, and the justices of peace of every county, and justices of peace in towns corporate, (having authority to determine felonies,) to determine all such offences in their general sessions, and to execute the offenders which shall be convicted before them, as in cases of felony; except some honest person, valued at the subsidy next before the time, to £10. in goods, or 40s. in lands; or else some honest freeholder, as by the said justices shall be allowed, will be contented, before said justices, to take him into his service for one year, and then before said justices will be bound by recognizance of £10. to be levied of his lands or goods to the use of the crown, if he keep not said person for one year, and bring him to the sessions for the peace and gaol delivery next ensuing said year: And if any person so retained depart within the year, without the license of him that retained him, then to be indicted, tried, and adjudged as a felon, and not to have the benefit of clergy.

s. 5.

*Proviso for cases
of sickness.*

Provided (s. 5) that any such idle and wandering person who shall fall sick by the way, so that he cannot travel to his journey's end within the time limited within his testimonial, shall not be within the danger of this statute, so as he settle himself in some lawful course of life, or repair to the place where he was born, or was last abiding, within convenient time after the recovery of his sickness, and there remain as aforesaid. And by

s. 6.

*Proviso for cases
where such sol-
diers, &c. can-
not get work.*

s. 6. when any such soldier or mariner coming from the seas, or from beyond the seas, shall repair to the place of his dwelling or birth, according to said testimonial, and cannot get there any work, then upon complaint made by such soldier, &c. to 2 justices of peace of said county, of or near to the place, the said 2 justices shall set such soldier, &c. to some such honest work as to them shall be thought meet; and for want of such work shall tax the hundred, by their discretion, for the relief of such soldier, &c. And provided (s. 7.) that if any

s. 7.

*Such soldiers,
&c. may be li-
censed to ask
and take relief.*

soldier or mariner coming from the seas, &c. shall resort to some justice of peace next adjoining to his place of landing or way, and make known to him his poverty, such

such justice shall have power to license such soldier, &c. to pass the direct way to the place where he is to repair, and to limit him so much time as shall be necessary for his travel thither; and in such case he may, for his necessary relief in such his travel, ask and take the relief that any person shall willingly give him. By s. 8. this act shall not work any corruption of blood in the heir of any offender. No similar statute has been passed in Ireland.

s. 8.

No corruption of blood.

VI. The 22 Hen. 8. c. 10. Eng. recites, that divers outlandish people, calling themselves *Egyptians*, using no craft nor feat of merchandize, have come into this realm, and gone from shire to shire, and place to place, in great company, and used great, subtil, and crafty means to deceive the people; bearing them in hand, that they by palmestry could tell men's and women's fortunes; and so many times by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies; and enacts, that no such person be suffered to come within the realm; and if they do, they shall forfeit to the king all their goods and chattels, and be commanded to avoid the realm within 15 days, upon pain of imprisonment. And it shall be lawful to every sheriff, justice of peace, and escheator, to seize to the use of the king all such goods as they shall have, and thereof to make account in his exchequer. And if any such stranger shall commit any felony, the inquest that shall pass between the king and such party shall be altogether of Englishmen, and not *de medietate linguæ*. Provided (s. 4.) that every person who can prove, by 2 persons, before the party that seizeth such money or goods, &c. of the Egyptians, that any part thereof was craftily or feloniously taken from him, he shall be restored to the same; upon pain to forfeit to the party that maketh such proof, the double value of the same, by action of debt, or otherwise, in any of the king's courts, wherein, &c. And by s. 5. any justice of peace, &c. who shall seize the goods of any such Egyptian, shall have, to his own use, the moiety thereof; and upon account for the other moiety, the accountant shall

§ 6.

Punishment of Egyptians or gypsies coming into the realm.

22 Hen. 8. c. 10. s. 1. 2 & 3. Eng.

s. 4.

Proviso for restitution of goods stolen by gypsies.

s. 5.

Forfeitures how disposed of.

1 & 2 Ph. & M. c. 4. s. 2. Eng. pay no fee. And by the 1 & 2 Ph. & M. c. 4. Eng. if any person willingly bring into this realm any such persons calling themselves or commonly called Egyptians, he shall forfeit £40. And by s. 6. if any person shall sue for any license or passport for any of the said persons called Egyptians, to abide within this realm contrary to this act, every person so suing shall forfeit £40. and every such license shall be void; one moiety of which forfeiture shall be to the crown, and the other to him that will sue for the same, in any court of record, by action of debt, &c. wherein, &c. By s. 8. this act shall not extend to children not above the age of 13 years. And by the 17 Geo. 2. c. 5. Eng. (which will be more fully stated in a subsequent page) all persons pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending to have skill in physiognomy, palmestry, or like crafty science, or pretending to tell fortunes, or using any subtil craft to deceive any of his majesty's subjects, shall be deemed rogues and vagabonds within the meaning of this act.* By the 10 & 11 Car. 1. c. 4. s. 9. Ir. all persons pretending to be Egyptians, or wandering in the habit, form, or attire of Egyptians, were made punishable as rogues, vagabonds, and sturdy beggars were by the 33 Hen. 8. st. 1. c. 15. Ir. But the 10 & 11 Car. 1. c. 4. Ir. and 33 Hen. 8. st. 1. c. 15. Ir. are both repealed by the 11 & 12 Geo. 3. c. 30. Ir.

§ 7. VII. To the head of *nusance* is to be referred the provision of the Great Charter 9 Hen. 3. c. 23. E. & I.† which enacts, that all wears shall be utterly put down, along

Wears to be removed as public nuisances.

* The 1 & 2 Ph. & M. c. 4. s. 3. Eng. made it a felony without benefit of clergy, for Egyptians coming into the realm, to remain for a month therein: And the 5 Eliz. c. 20. Eng. extended this provision to persons associating with such vagabonds, or disguising themselves by their apparel, speech, or behaviour, like unto them: But this latter statute is repealed by the 23 Geo. 3. c. 51. Eng. and so much therefore of the 1 & 2 Ph. & M. c. 4. as made Egyptians liable to the pains of felony, is therefore virtually repealed: and is besides superseded by the 17 Geo. 2. c. 5. *supra*.

† The 12 Edw. 4. c. 7. E. & I. recites, that this provision of the Great Charter was for avoiding the straitening of rivers, so that ships and boats might have free passage, and for preserving the fry of fish spawned within the same.

along the Thames and Medway, and throughout Eng-
land, save only upon the coasts of the sea. And by the
25 Edw. 3. st. 4. c. 4. E. & I. all mills, wears, stanks,
stakes, and kidels, set up in the time of king Edward I.
whereby ships and boats were disturbed are directed to
be pulled down, without being restored: and thereupon
writs to be sent to the sheriffs of the places to do thereof
execution; and justices shall be thereupon assigned at
all times needful. And the 45 Edw. 3. c. 2. E. & I.
further enacts, that if any person shall restore any such
annoyance contrary to the 25 Edw. 3. *supra*, and be
thereof attainted, he shall incur the pain of 100 marks to
the king, to be levied by estreats of the exchequer. And
the like law shall hold of annoyances made by enhanc-
ing of such wears, &c. And these statutes 25 Edw. 3.
and 45 Edw. 3. are further enforced by the 1 Hen. 4.
c. 12. E. & I. which enacts, that commissions shall be
made to justices in every county of England where need
shall be, to survey and keep the waters and great rivers,
and to amend defaults, and make due execution of the
said statutes, as well by their survey and discretion, as
by inquest to be taken. And if any such nuisances of
wears, &c. in old time made, be judged to be pulled
down and amended, he that hath the freehold shall
make thereof execution at his own costs, within half a
year after notice, upon pain of 100 marks, to be paid
to the king by estreats in the exchequer; and he that
causeth them to be restored, or enhanced or straited,
against the said judgment, and thereof be convict, shall
incur the pain of 100 marks. And in case any feel him-
self grieved by execution, or other way in this behalf,
against right or reason, he shall have remedy. The 4
Hen. 4. c. 11. E. & I. further enacts, that commissions
shall be awarded to certain justices and others in every
county where it shall be needful, to inquire of all that
is contained in the said statutes, and to punish the of-
fenders by fine; saving to the king the penalties com-
prised in said statutes; and the estreats of such fines shall
be delivered by the justices to the sheriff by indenture;
and the said sheriff shall pay, of the issues arising from
said

9 Hen. 3. c. 23.
E. & I.

25 Edw. 3. st. 4.
c. 4. E. & I.

*Mills and other
such obstruc-
tions to rivers,
to be pulled
down.*

45 Edw. 3. c. 2.
E. & I.

*Penalty for re-
storing such
nuisances.*

1 Hen. 4. c. 12.
E. & I.

*Commissions to
issue for inquir-
ing into such
nuisances.*

*Such nuisances
how abated.*

4 Hen. 4. c. 11.
E. & I.

*Commissioners
how paid.*

said estreats, to every of the justices for every day that he shall travel to exercise the commission, 4s.; and the sheriffs shall have thereof allowance in the exchequer.

12 Edw. 4. c. 7.
E. & I.

*Judgment of
commissioners,
how enforced.*

And by the 12 Edw. 4. c. 7. E. & I. if by award of the commissioners assigned according to the 1 Hen. 4. c. 12. *supra*, it be found that any wears, fishgarths, mills, mill-dams, millstanks, locks, ebbing wears, stakes, kidels, hecks, or flood-gates, be made, enhanced, straited or enlarged, against the said statute, the offenders being duly warned by the sheriff, by *scire facias*, and within 3 months they do not amend and break down the same, they shall forfeit 100 marks, to be paid by estreats in the exchequer. And by s. 4 & 5. if the offender, his heirs or assigns, continue the same default, they shall forfeit, for every month after the said 3 months ended, 100 marks; one half to the king, and the other to any who will sue for the same by action of debt, &c. without fine to be taken for the same in chancery, wherein, &c. And by s. 6. if any person, other than such against whom such judgment were made, being heir or assignee to them, do continue any such wears, &c. or other obstructions, he shall forfeit for every month 100 marks; the one half to the king, and the other to him that will sue as aforesaid.

*Nusances to
roads, bridges,
&c. restrained.*

13 Geo. 3. c. 78.
Eng.

13 Geo. 3. c. 84.
E. & I.

43 Geo. 3. c. 59.
E.

36 Geo. 3. c. 55.
Ir.

32 Geo. 3. c. 30.
Ir.

The 13 Geo. 3. c. 78. Eng. contains several provisions in respect to nusances to highways, and authorizing the surveyors of highways to abate such nusances. And the provisions of this act in such respects, are extended to the surveyors of turnpike roads, by the 13 Geo. 3. c. 84. s. 70. Eng. and to the surveyors of bridges by the 43 Geo. 3. c. 59. E. as already observed vol. 1. p. 263. And the 36 Geo. 3. c. 55. s. 65 to 74. Ir. enumerates a number of nusances to the public roads, and bridges, and to the streets and passages of towns in Ireland, which it restrains by divers penalties, and which are hereby liable to be abated by the overseers and conservators of roads, as also by any magistrate, and by the grand jury, or justices of peace at their sessions, and in some instances by any person whatsoever. And these clauses seem to extend to turnpike roads as well as to presentment roads. And the 32 Geo. 3. c. 30. Ir. re-

strains

strains also several nuisances in respect to the post roads of Ireland. The 30 Geo. 3. c. 37. Ir. is to be here noticed, which enacts, that any buildings upon the trackways of canals, (save only necessary lock-houses, market-houses, and store-houses, while they shall be applied to such uses) shall be pulled down, as nuisances and encroachments on turnpike roads. To which statutes I shall content myself with referring thus generally.

The statutes restraining the burning of land in Ireland, are proper for this place, and seem to deserve a particular statement. By the 17 Geo. 2. c. 10. Ir. as amended by the 1 Geo. 3. c. 17. Ir. 3 Geo. 3. c. 29. Ir. 5 Geo. 3. c. 10. Ir. 11 Geo. 3. c. 2. Ir. and 40 Geo. 3. c. 24. Ir. no person in the possession or enjoyment of any land by virtue of any lease, contract, or demise, nor any person claiming or deriving under him, shall be permitted to burn the soil or surface of the earth in or upon any part of any lands in his possession; upon pain of forfeiting [*£10. for every Irish plantation acre, and at the same rate for any greater or less quantity.] And in all cases whether the soil or surface shall be burned or permitted to be burned by the original lessee, or by the occupier of such land, and where the original lessor shall not have consented to such burning, [†it shall be lawful for 2 justices of peace, within their jurisdiction, to hear and determine, in a summary way, all such offences; and upon information upon oath given them by the original lessor, his heirs or assigns, or a witness on his or their behalf, of such pernicious burning, to summon before them] [‡either the original lessee, or any tenant deriving under said original lessee, or the immediate occupier of such land, at the election of said original lessor,] [§and in case he shall not appear, or offer some reasonable excuse for his default, then it shall be lawful for said justices to issue their warrant for the apprehending the party accused; and upon their appearing, or in case they shall not appear, and cannot be apprehended on a warrant so granted, then (upon notice in writing given to or left for him or them at his or their usual place of abode, and such notice being proved upon

30 Geo. 3. c. 37. Ir.

Penalty for burning land in Ireland.

17 Geo. 2. c. 10. Ir.

1 Geo. 3. c. 17. Ir.

3 Geo. 3. c. 29. Ir.

5 Geo. 3. c. 10. Ir.

11 Geo. 3. c. 2. Ir.

40 Geo. 3. c. 24. Ir.

* 40 Geo. 3. c. 24. Ir.

Jurisdiction of justices in respect thereto.

† 3 Geo. 3. c. 29. Ir.

‡ 5 Geo. 3. c. 10. Ir.

§ 3 Geo. 3. c. 29. Ir.

*Penalties how
enforced.*

* 5 Geo. 3. c. 10.
Ir.

† 3 Geo. 3. c. 29.
Ir.

† 5 Geo. 3. c. 10.
Ir.

§ 3 Geo. 3. c. 29.
Ir.

upon oath) such justices shall make inquiry touching the matters complained of, and examine any witness on either side on oath; and after hearing the parties and witnesses, convict or acquit the parties accused, of the said penalty, together with the cost of surveying the land; and if the said penalty shall not be paid within 24 hours after such conviction, then the said justices shall issue their warrant, directed to any peace officer within their jurisdictions, empowering them to make distress of the goods or chattels of the offender;] [*which warrant shall be granted either against the original lessee, or any tenant deriving under such original lessee, or the immediate occupier of such land, at the election of the original lessor, his heirs or assigns; and in case such original lessee, or any deriving under him, shall remove from the county in which such burning shall be committed, then any chief magistrate or justice of peace, within whose jurisdiction such person shall be found, shall back and enforce the warrant granted by said justices; and thereupon the penalty, together with the costs of surveying, shall be levied on the goods, &c. of such person, by distress and sale thereof;] [†and if within 5 days from the distress being taken, the money forfeited shall not be paid, the goods seized shall be appraised and sold, rendering the overplus, if any, deducting the penalty and cost of the distress and sale, to the owner; which charges shall be ascertained by the said justices of peace before whom such person shall have been so convicted, or by the chief magistrate or other justice who backed the warrant;] [‡and in default of payment on application of any prosecutor, and proof made of the conviction, it shall be lawful for such justices before whom the party was convicted, or chief magistrate or justice who backed the warrant, to commit the offender to the common gaol within the county, &c. where the offender shall be found, for the space of not less than 3 months nor more than 12 months, to be proportioned by the said chief magistrate or justice of peace, to the quantity of land so burned.] [§And the justices of peace before whom any person shall be so convicted, shall

shall cause such conviction to be drawn in the form and to the effect following. “ Be it remembered that on this Form of conviction.

“ — day of — in the — year of the reign —
“ *A. B.* is convicted before — his majesty’s justices of
“ the peace for the said county of — (*or for — as*
“ *the case shall happen*) for the pernicious burning of
“ land, to wit, the quantity of —; and we do therefore
“ adjudge him (*her or them*) to pay and forfeit for the
“ same the sum of — together with the cost of —
“ for surveying the same. Given under our hands and
“ seals the day and year aforesaid.” Provided that any

person aggrieved by the judgment of such justices, may appeal to the justices at the quarter-sessions of the peace, unless such conviction shall be within 10 days Appeal to quarter-sessions.

of said quarter-sessions, and then at the next sessions, or the next following to that, (at the option of the party convicted) which shall be held for said county, &c. where such judgment shall have been given; and then the execution of said judgment shall be suspended, the person so convicted entering into a recognizance at the time of such conviction, with 2 sureties in double the sum which such person shall have been adjudged to pay, to prosecute such appeal with effect, and to be forthcoming to abide the determination of the justices at said general or quarter-sessions; and the said justices at said sessions shall hear such appeal, and award reasonable costs to be paid by either party; and if the judgment shall be affirmed, such appellant shall immediately pay down the forfeiture, together with the costs of such appeal; and in default of the appellant’s paying the same, any two such justices, or any one magistrate or justice having jurisdiction in the place into which such appellant shall escape, or where he shall reside, shall, by warrant, commit such appellant to the common gaol of the county, &c. where he shall be apprehended, until he shall pay the penalty, and the costs adjudged to the prosecutor; but if the appellant shall make good his appeal, reasonable costs shall be awarded to the appellant, to be recovered by him against such prosecutor, in like manner as hereinafore directed to be recovered
against

In default of original lessor, intermediate lessor may proceed for penalty.

* 5 Geo. 3.
c. 10. Ir.

Lessees against whom penalty levied, indemnified by occupier.

Corporate bodies to have like remedy.

† 17 Geo. 2.
c. 10. Ir.

† 5 Geo. 3. c. 10.
Ir.

Penalty for hindering survey of land burnt.

† 1 Geo. 3. c. 17.
Ir.

Survey how to be.

§ 17 Geo. 2.
c. 10. Ir.

Covenant of lessees not to burn, how enforced.

against such appellant. And in case the original lessor, or his heirs, shall not proceed within 6 calendar months after such pernicious burning, it shall be lawful for the original lessee, his heirs, executors, administrators, or assigns, within 6 months after the time hereby given to the original lessor, to proceed in the same manner for and recover any such penalty and cost as is hereinbefore directed in the case of the original lessor; and in case the original lessee shall not proceed for said penalty and cost as aforesaid, then it shall be lawful for the next immediate lessor, and so successively, to proceed for said penalty and cost within 3 months after the time hereby granted to the original lessee.] [*And the original lessee or intermediate tenant on whom the said penalties shall be levied, shall have his remedy and indemnification against the occupier of the land, in such manner as above provided for the original lessor. And all bishops, deans, and chapters, and other corporate bodies, who may, under their corporate rights, be possessed of landed estates, shall have the same remedies as if they were to be deemed heirs to their predecessors] [†And in order to ascertain the quantity of ground so burnt contrary to these acts, it shall be lawful for the person entitled to the penalty by these acts, or by covenant in any lease, or any other person employed by him, to enter upon such land so burnt, and to survey the same; and if any person shall hinder the person so entitled, or those employed by him, from taking such survey, he shall forfeit to the person so entitled £20. to be recovered in the same manner, and with the like appeal, as the other penalties:] [†And all ridges or paths left unburned or intermixed with the parts so burned, shall be surveyed with the parts that shall be so burned, and shall be deemed as part of the land so burned, so as to subject the person to the penalty, as if no such ridges, &c. had been left unburned.] [§And in all cases where the tenant or lessee shall have covenanted not to burn the soil or surface of the earth in or upon any part of the lands to him demised, or agreed to be demised, under the penalty of an

an increase of rent for every acre so burnt, or under any penalty, it shall be lawful for the lessor or landlord, his heirs, successors, or assigns, or for the person who for the time being shall be entitled to the rent and reversion, or remainder of the said premises, to distrain for or sue for the recovery of such penalty, in such manner as he may for rent accrued, or any other debt, or to sue for the same by civil bill, (although the said advanced rent or penalty should exceed the sum for which a suit by civil bill may be commenced,) at the election of such lessor, &c.]

The 10 & 11 Car. 1. c. 15. Ir. may be here stated, which enacts, that no person shall plough, harrow, draw, or work with any horse, gelding, mare, garran, or colt, by the tail, nor cause nor suffer any other to plough, &c. with his horses, &c. by the tail : and no person shall pull the wool off any living sheep, (or cause, &c.) instead of shearing or clipping of them : and the justices of assize at the general assizes, and the justices of peace at their quarter-sessions, shall have power to inquire of such offences, and to punish the offenders by fine and imprisonment. And another barbarous custom is prohibited by the 10 & 11 Car. 1. c. 17. Ir. which enacts, that no person shall burn, (or cause, &c.) any corn or grain in the straw, upon pain of imprisonment in the common gaol of the county where the offence shall be committed, for 10 days, for the 1st offence, and the delinquent to pay the charge of sending him, before he be enlarged ; and for the 2nd offence to be imprisoned one month, and to pay the charges as aforesaid ; and for the 3rd offence to forfeit 40s. and to be bound to good behaviour, and to pay the charges as aforesaid ; the said 40s. to the relief of the prisoners in said gaol, and to be paid to the chief magistrate of the place where such gaol is ; and it shall be lawful for the justices of peace of the county where such offence shall be committed, in their sessions, to inquire thereof, &c.

None shall work horses by the tail ; nor pull of the wool from living sheep.

10 & 11 Car.1.
c. 15. Ir.

Offenders how punished.

10 & 11 Car.1.
c. 17. Ir.

Penalty for burning corn or grain in the straw.

The following statutes respecting certain wasteful injuries or nuisances to commons, may be here also stated.

By the 29 Geo. 3. c. 30. Ir as amended by the 31

Nuisances to commons restrained.

29 Geo. 3.c.30.
s. 1. Ir.

Geo. 3.

(31 Geo. 3. c. 38.
s. 1. Ir.)

s. 2.

*Jurisdiction of
justices.*

s. 3.

*Penalty how ap-
plied.*

s. 4.

Proviso.

s. 5.

*Penalties for in-
juries by pigs.*

31 Geo. 3. c. 38.
s. 2. Ir.

*Powers of grand
juries in respect
to encroachments
on commons.*

Geo. 3. c. 38. s. 1. Ir. if any person shall skin or otherwise destroy any part of the surface of any common, he shall forfeit any sum not exceeding £5. nor less than 5s. for every square yard of such common which he shall so skin. And by s. 2 it shall be lawful for any justice of peace in any county in which such offence shall be committed, to summon any person against whom complaint shall be made, to appear before him; and if such person after notice given to him to appear, shall be convicted of such offence by the oath of a witness, he shall forfeit £5. to be levied by distress, &c. and if sufficient distress shall not be found, then such justice shall commit such person to the common gaol of the county in which such person shall have been so convicted, for any time not less than one calendar month, nor more than 3 calendar months. And by s. 3. one moiety of such penalty shall be paid to the person who shall make such complaint, the other to the poor of the parish. Provided (s. 4.) that nothing herein shall prohibit the cutting or carrying away the surface of heathy, mountainous, or moory ground, which has been heretofore used as such. And by s. 5. it shall not be lawful for any person to drive or suffer pigs to graze on any common, unless they shall have rings or staples in their noses, sufficient to prevent them from rooting up or destroying the surface of such common; and if any pig shall be found on any such common without such ring or staple, it shall be lawful for any person to seize and impound such pig, in the pound next adjoining to such common, until the owner of such pig shall pay 5s. for every pig so impounded, to the person who shall have so seized such pigs. And by the 31 Geo. 3. c. 38. s. 2. Ir. it shall be lawful for every grand jury at the assizes, or at any quarter sessions to be held in any county, &c. within which such common shall lie, upon information on oath made before any magistrate of such county, &c. of any encroachment which shall have been made within 10 years from the passing of this act, or which shall hereafter be made, whether by enclosing any part thereof, or building any house, hut, or cabin upon the same, to present such encroachment, by indictment

dictment or presentment, as a public nuisance, which indictment, &c. if not defective upon the face of it, shall be confirmed by the judge or justices before whom such grand jury shall be impanelled; and the sheriff of such county, &c. shall forthwith prostrate and abate such nuisance. Provided (s. 3.) that every person who shall be affected by such indictment, &c. may put in his traverse to the same, at the assizes, or at any quarter-sessions, at which it shall be so found and presented, by pleading that such enclosure, &c. is not an encroachment upon such common; which traverse shall be forthwith tried, if there shall be time for trying the same, and if not, then at the next assizes or quarter-sessions; and the verdict found upon such traverse shall be conclusive as to the matter of the same, saving to all persons, &c. their rights of common. These statutes are peculiar to the law of Ireland.

s. 3.

*Presentments
traversable.*

By the 9 & 10 W. 3. c. 7. Eng. it shall not be lawful for any person to make, or cause to be made, or to sell or utter, or offer or expose to sale, any squibs, rockets, serpents, or other fire-works, or any cases, moulds, or other implements for the making of any such squibs,

Making, selling, or throwing squibs, &c. a public nuisance.

9 & 10 W. 3. c. 7. Eng.

&c.; or for any person to permit any squibs, &c. to be cast, thrown, or fired from, out of, or in his house, lodging, or habitation, or any part or place thereto belonging or adjoining, into any public street, highway, road, or passage; or for any person to cast, &c. or to be aiding or assisting in the casting, &c. of any squibs, &c. into any public street, &c.; and every such offence shall be adjudged a common nuisance. And by s. 2. if

s. 2.

any person shall make, &c. or sell, &c. any squibs, &c. or any cases, &c. for the making of such squibs, &c. such person being convicted before a justice of peace of the county, &c. or chief magistrate of the place where such offence shall be committed, either by his confession, or by the oath of 2 witnesses, shall forfeit

Penalties for making, &c. squibs, &c.

£5. And if any person shall permit any squibs, &c. to be cast, &c. from, out of, or in his house, &c. into any public street, &c. such offender, being convicted as aforesaid, shall forfeit 20s.; said forfeitures to be levied by distress and sale of the goods of such offender, by warrant of such

Penalty for permitting them to be thrown into streets, &c.

justice

- justice or chief magistrate; one half of said forfeitures to be to the use of the poor of the parish where such offence shall be committed, and the other half to the use of him who shall prosecute and convict such offender. And by s. 3. if any person shall cast, &c. or be aiding or assisting in the casting, &c. of any squibs, &c. in or into any public street, &c. such offender being thereof convicted as aforesaid, shall forfeit 20s. to the uses aforesaid; and if the person so as aforesaid last offending shall not, immediately upon his being convicted, pay to the said justice or chief magistrate the said forfeiture, such justice, &c. shall by warrant commit him to the house of correction within the county, &c. where such last-mentioned offence shall be committed, to be kept to hard labour for any time not exceeding one month, unless such offender shall sooner pay such forfeiture to the said justice, &c. Provided (s. 4.) that it shall be lawful for the master, lieutenant, or commissioners of his majesty's ordnance, or for any person by them authorized, to give orders for the making any sort of fire-works, to be used and fired according to such orders: [And by s. 5. it shall be lawful for the artillery company of the city of London, or any other artillery company or society of persons lawfully met together for the use and exercise of arms, the trained bands, and the militia, to make and use any fire-works in the practice of arms and warlike exploits, as before the making of this act.] By s. 6. if any person be sued for putting in execution this act, he may plead the general issue of not guilty; and shall have treble costs of nonsuit, verdict, discontinuance, or judgment upon demurrer.
- s. 3.** *Penalty for throwing them into streets, &c.*
- s. 4.** *Proviso.*
- s. 5.** *Proviso.*
- s. 6.** *Pleading.*
- Costs.*
- 5 Geo. 2. c. 12. Ir. is the corresponding statute in Ireland: save that the 5th section, *supra*, has not been followed by any similar clause. It may be proper here to refer to the 12 Geo. 3. c. 61. Eng. which contains several provisions for preventing the great mischiefs which may arise from explosions occasioned by the improper construction and use of the mills, engines, and buildings employed in the making of gunpowder, and for keeping and carrying gunpowder in too great quantities,
- 12 Geo. 3. c. 61. Eng. *Provision as to the keeping and carrying gunpowder.*

tities, or in an improper manner. Other statutes which contain provisions respecting nuisances, will be found under the heads to which they more properly belong.

VIII. The 17 Geo. 2. c. 5. Eng. is an act to amend and make more effectual the laws* relating to *rogues, vagabonds, and other idle and disorderly persons*, and to houses of correction; and enacts, that all persons who threaten to run away and leave their wives or children to the parish; and all persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of 2 justices of peace, without bringing a certificate from the parish or place whereunto they belong; and also all persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual wages given to other labourers in like work, in the parishes, &c. where they then are; and also all persons going about from door to door, or placing themselves in the streets, highways, or passages, to beg alms in the parish, &c. where they dwell, shall be deemed idle and disorderly persons; and it shall be lawful for any justice of peace to commit such offenders (being convicted by his own view, or by confession, or by the oath of a witness) to the house of correction, to be kept to hard labour for any time not exceeding a month; and it shall be lawful for any person to apprehend, and carry before a justice, any such persons going about from door to door, or placing themselves in streets, &c. to beg alms, &c.; and if they shall resist, or escape from the person apprehending them, they shall be subject to the same punishment as rogues and vagabonds are made liable to by this act; and it shall be lawful for the said justice, by warrant, to order any overseer of the poor of the parish or place where such offender is apprehended, to pay 5s. to any person apprehending them, for every offender so apprehended; which shall be allowed to such overseer

§ 8.

Who to be deemed idle and disorderly persons,

17 Geo. 2. c. 5. s. 1. Eng.

*How punished.**Reward for apprehending them.*

* This statute seems therefore to supersede the several provisions of the 7 Jac. 1. c. 4. 13 & 14 Car. 2. c. 12. 6 Geo. 1. c. 19, and 14 Geo. 2. c. 33.

overseer in his account, he producing the justice's order, and a receipt under the hand of the person to whom such sum was paid : but if such overseer neglect or refuse to pay the said sum, the said justice, on oath thereof made, ~~may~~, by warrant, order the same to be levied by distress and sale of the goods of such overseer ; who in such case shall not be allowed the sum so levied, in his account.

32 Geo. 3. c. 45.
s. 8. Eng.

Further description of idle and disorderly persons.

The 32 Geo. 3. c. 45. Eng. (which amends this act) also enacts (s. 8.) that if it shall be made appear to any 2 justices of peace, that any poor person shall not use proper means to get employment, or, if he is able to work, by his neglect of work, or by spending his money in ale-houses or places of bad repute, or in any other improper manner, shall not apply a proper proportion of the money earned by him towards the maintenance of his wife and family, by which wilful default or neglect, they, or any of them, shall become chargeable to their parish or township, he shall be considered as an idle and disorderly person, and be subject to such punishment as directed by the 17 Geo. 2. c. 5. *supra*.

Who to be deemed rogues and vagabonds.

17 Geo. 2. c. 5.
s. 2. Eng.

By s. 2. all persons going about as patent gatherers or gatherers of alms, under pretence of loss by fire, or other casualty, or going about as collectors for prisons, gaols, or hospitals ; all fencers and bear-wards ; all common players of interludes ; and all persons who shall for hire, gain, or reward, act, represent, or perform, (or cause to be acted,) &c. any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, not being authorized by law ; all minstrels, jugglers ; all persons pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending to have skill in physiognomy, palmistry, or like crafty science, or pretending to tell fortunes, or using any subtil craft to deceive ; or playing or betting at any unlawful games or plays ; all persons who run away, and leave their wives or children, whereby they become chargeable to any parish or place ; all petty chapmen and pedlers wandering abroad, not being duly licensed ; and all persons wandering abroad, and lodging in ale-houses, barns, out-houses, or in the open air, not giving a good account of themselves ; and all persons wandering

wandering abroad and begging, pretending to be soldiers, mariners, seafaring men, or pretending to go to work in harvest: and all others wandering abroad and begging, shall be deemed rogues and vagabonds. But by s. 3. this act shall not extend to any person going abroad to work in harvest, so as he carry with him a certificate signed by the minister and one of the churchwardens or overseers of the poor of the parish or place where he inhabits, declaring that he hath a dwelling-house or place there, in which he inhabits. And by this clause, as amended by the 43 Geo. 3. c. 61. E. every soldier or marine duly discharged out of any regiment, and every sailor duly discharged out of any ship or vessel belonging to his majesty's navy, carrying his discharge by the third day at latest from the date thereof, to the mayor or chief magistrate of the city, town, port, or corporate place, nearest to or within 15 miles from the place where he shall have received his discharge, shall receive from such mayor, &c. a certificate under his hand, stating the place to which such person is desirous of going, (being his home or place of legal settlement) together with the time to be fixed, not exceeding 10 days for every 100 miles, and so in proportion, except for a reasonable cause to be expressed in such certificate; and such person producing such discharge and certificate, and being in his route accordingly, shall not by reason of asking relief be deemed a rogue or vagabond within the meaning of the 17 Geo. 2. c. 5. *supra.* or the 32 Geo. 3. c. 45. Eng. :* Provided that such discharge shall bear the true date, both as to the time when, and the place where, it was given, and shall express the sum, if any, which was paid to such soldier or sailor at such time and place. And by s. 2. the wife of any non-commissioned officer or soldier ordered for foreign service, making due proof of her not being permitted to embark with her husband, before the mayor, &c. of

s. 3.

*Proviso.*43 Geo. 3. c. 61.
s. 1. E.*Proviso as to
soldiers and ma-
riners having
certificates:*

s. 2.

*And wives of
non-commis-
sioned officers
and soldiers.*

VOL. II.

3 D

&c. of

* This statute (s. 7.) declared all soldiers and mariners wandering and begging to be rogues and vagabonds, notwithstanding a proviso in the 17 Geo. 2. c. 5. s. 3. as to soldiers and mariners having certain certificates and testimonials permitting them to beg.

&c. of the city, &c. nearest to, or within 15 miles from, the place at which the regiment to which such officer or soldier belongs is ordered to embark, or of any other city, &c. at which the said regiment shall happen to be on its march, under orders for embarkation, shall receive from such mayor, &c. a certificate under his hand, and the corporate seal of such city, &c. stating the place to which she is desirous of going, (being her home or place of legal settlement,) together with the time to be fixed not exceeding 10 days for every 100 miles, and so in proportion, except for a reasonable cause to be expressed in such certificate; and such person producing such certificate, and being in her route accordingly both as to the time and road, shall not, by reason of asking relief, be deemed a rogue or vagabond within the meaning of the 17 Geo. 2. c. 5. or 32 Geo. 3. c. 45. By s. 3. in case of accident or sickness duly proved, which shall prevent the person having such certificate from proceeding on his journey, according to the terms prescribed therein, it shall be lawful for the chief magistrate of any other city, &c. where such person shall be, or shall arrive, to grant a new certificate stating therein the true reasons for granting the same, and containing the like provisions as herein-before described, and annex the same to the former certificate. And by s. 4. certificates or passes granted as heretofore from the office of admiralty or war office to discharged sailors, soldiers, or marines, or to the families of sailors, &c. serving abroad, or lately deceased, to carry them to their respective homes, shall have the same effect as the certificates herein permitted to be given by the magistrate as aforesaid; and the terms of the same may be extended by a new certificate from another magistrate, in manner herein before mentioned. The 23 Geo. 3. c. 88. Eng. further enacts, that if any person shall be apprehended having upon him any picklock, key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, ware-house, coach-house, stable, or out-house; or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon,

s. 3.

*Proviso for case
of sickness of
such soldiers,
&c.*

s. 4.

*Saving for former
powers of
war-office and
admiralty.*

23 Geo. 3. c. 88.
Eng.

*Other persons to
be deemed va-
gabonds, &c.*

weapon, with intent feloniously to assault any person; or shall be found in or upon any dwelling-house, warehouse, coach-house, stable, or out-house, or in any enclosed yard or garden, or area belonging to any house, with intent to steal any goods; he shall be deemed a rogue and vagabond within the meaning of the 17 Geo. 2. c. 5. *supra*. And it is enacted by the 39 & 40 Geo. 3. c. 50. Eng. that if any persons to the number of 2, or more, shall enter into, or be found in any forest, chase, park, wood, plantation, paddock, field, meadow, or other open or enclosed ground, in the night, viz. between 8 at night and 6 in the morning, from 1st of February to 1st of October, having any gun, net, engine, or other instrument for the purpose and with intent to destroy, take, or kill, or shall wilfully destroy, &c. any hare, pheasant, partridge, heath-fowl, commonly called black game, or grouse, commonly called red game, or any other game; or if any person shall be found with any gun, fire-arms, bludgeon, or other offensive weapon, protecting, aiding, abetting, or assisting any such person; the ranger, owner, or occupier of such forest, &c. or their keepers or servants, or any other person, may apprehend any such offender, and deliver him into the custody of a peace officer, who shall convey him before a justice; or if such offender shall not be so apprehended, it shall be lawful for any justice, on information upon oath of a witness, to issue his warrant for his apprehension, and if it appear to such justice, that such person is guilty of any of the offences aforesaid, he shall be deemed to be a rogue and a vagabond within the 17 Geo. 2. c. 5. and shall suffer as thereby directed; and if any person so convicted shall again offend, he shall be deemed an incorrigible rogue, and shall suffer such pains as by any law are inflicted on incorrigible rogues.

The 17 Geo. 2. c. 5. s. 4. Eng. further enacts, that all end-gatherers offending against the 13 Geo. 1. c. 23. and all persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice of peace, or to be examined upon oath before such justice, or to be conveyed

Who to be deemed incorrigible rogues and vagabonds.

17 Geo. 2. c. 5. s. 4. Eng.

by such pass as is herein directed, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment, and all rogues or vagabonds who shall break or escape out of any house of correction before the expiration of the term for which they were committed by virtue of this act; and all persons who after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences, shall be deemed incorrigible rogues within the meaning of this act.

*Any persons
may apprehend
such offenders.*

17 Geo. 2. c.5.
s. 5. Eng.

*Penalty on offi-
cers neglecting
their duty.*

*Reward for tak-
ing up vaga-
bonds.*

By s. 5. it shall be lawful for any person to apprehend offenders against this act, and to convey to some justice of peace persons so apprehended, to be proceeded against as is herein-after directed. And in case any constable, or other such officer, refuse or neglect to use his best endeavours to apprehend or convey to some justice any such offender, it shall be deemed a neglect of duty, and he shall be punished as is herein-after directed: and in case any other person charged by any justice so to do, refuse, &c. to use his best endeavours to apprehend and deliver to the constable, or such other officer, or to carry such offender before some justice where no officer can be found, being convicted upon view, or by oath of a witness, before a justice, he shall forfeit 10s. to the use of the poor of the parish wherein such offence shall be committed; to be levied by distress, by warrant from any justice: and in case any person, not being a constable or officer, apprehend any such rogue or vagabond, and deliver him to a constable, or other officer, or convey him to some justice according to this act, or if any constable or other such officer so apprehend and convey such rogue or vagabond, it shall be lawful for such justice to reward such constable or other person, by making an order, under hand and seal, upon the high constable, to pay 10s. to the person so apprehending him, within a week after demand, and producing such order, and giving a receipt; and the same shall be allowed by the treasurer of the county, &c. to such high constable on his passing his accounts, and delivering such order and receipt, and also his own receipt for the same

same to such treasurer; and the said justices at the general or quarter sessions, shall allow the same to the treasurer in his accounts, upon his producing the vouchers aforesaid; and in cities and places where there are no high constables, such petty constables and other officers shall pay or retain such rewards, and be allowed it by virtue of this act, in their respective accounts, upon their producing and delivering up the like vouchers; and in case such high constable, or where there is no high constable, such petty constable or other officer, refuse or neglect to pay such reward on demand, it shall be lawful for such justice, by warrant, to levy the sum of 20s. by distress and sale of goods, and thereout to allow to the person entitled, the said reward of 10s. and such other recompense for his trouble, time, and expenses, as the said justice thinks fit. But by the 32 Geo. 3. c. 45. s. 2. Eng. no justice of peace shall order any reward to be paid to any constable or other person, for apprehending any rogue or vagabond, until such rogue, &c. shall have been punished as hereby directed, (s. 5. *post.*) and until the examination required by the 17 Geo. 2. c. 5. *supra*, be transmitted to the next general or quarter sessions.

By the 17 Geo. 2. c. 5. s. 6. Eng. the justices of peace for every county, &c. or any 2 of them, shall, 4 times in the year, or oftener if need be, meet in their respective divisions, and by their warrant command the constables or other peace officers of every hundred, parish, town, and hamlet, (who shall be assisted by sufficient men of the same places) to make a general privy search in one night throughout their several limits, for the apprehending of rogues and vagabonds; and every justice shall, on receiving information that rogues and vagabonds are in any place within his jurisdiction, issue his warrant to the constable or other officer of such place, to search for and apprehend them; and such rogues and vagabonds as they apprehend upon such searches, they shall cause to be brought before any justice of peace of the same county, &c. By the 25 Geo. 2. c. 36. s. 12. Eng. it shall be lawful for any 2 justices of peace, in case any person

22 Geo. 3. c. 45.
s. 2. Eng.

No reward to be
paid till vaga-
bonds, &c. pun-
ished.

Searches direct-
ed to be made
for apprehending
vagabonds.

17 Geo. 2. c. 5.
s. 6. Eng.

25 Geo. 2. c. 36.
s. 12. Eng.

*Justices may
examine vaga-
bonds, &c. upon
oath.*

*And commit
such as do not
give a satisfac-
tory account of
themselves.*

*Such persons
when to be dis-
charged.*

*Justices how
to deal with
vagrabonds,
&c. taken up.
17 Geo. 2. c. 5.
s. 7. Eng.*

person apprehended upon any general privy search, or by any special warrant, be charged before them with being a rogue and vagabond, or an idle and disorderly person, or with suspicion of felony (although no direct proof be then made thereof,) to examine such person upon oath, not only as to the place where he was last legally settled, but also as to his means of livelihood; (the substance of which examination shall be put into writing, and be signed by the person so examined; and the said justices shall sign the same, and transmit it to the next general or quarter sessions of the peace for the same county, &c. to be filed and kept on record;) and if such person do not make it appear to such justices, that he has a lawful way of getting his livelihood, or procure not some responsible house-keeper to appear to his character, and give security for his appearance before such justices, at some other day (in case the same be required,) to commit such person to some prison or house of correction, for any time not exceeding 6 days; and in the mean time to order the overseers of the poor of the parish or place in which such person is apprehended, to insert an advertisement in some public paper, describing such suspicious person, and any thing found upon him, or in his custody, and which he is suspected not to have come honestly by, and mentioning the place to which such person is committed, and specifying when and where such person is to be again brought before them to be re-examined; and if no accusation be then laid against him, such person shall be discharged, or otherwise dealt with according to law.

By the 17 Geo. 2. c. 5. s. 7. where any rogues or vagabonds apprehended by any constable or other person, or upon such search as in s. 6. *supra*, are brought before any justice, such justice shall inform himself by the examination upon oath of the person apprehended, or of any other person, of the condition and circumstances of the person so apprehended, and of the parish where he was last legally settled; the substance of which examination shall be put in writing, and be signed by the person examined, and by the justice, and be transmitted to the next

next general or quarter sessions of the peace, there to be filed; and such justice shall order all such persons so apprehended, to be publicly whipped by the constable, petty constable, or tithingman, or some other person appointed by such constable, &c. of such parish or place where such persons were apprehended; or order such persons to be sent to the house of correction until the next general or quarter sessions, or for any less time; and after such whipping or confinement, such justice may, by a pass under his hand and seal, in the manner and form hereafter directed, cause such persons to be conveyed to the place of their last legal settlement; but if it cannot be found, then to the place of their birth; or if such persons be under the age of 14 years, and have any father or mother living, then to the place of abode of such father or mother, there to be delivered to some church-warden or overseer of the poor; (for which pass a form is hereby prescribed). And by s. 8. such justice shall make a duplicate of such pass and examination, and sign the same; and shall transmit the duplicate of the said pass annexed to the examination, to the next general or quarter sessions of the peace, there to be filed; and shall annex the duplicate of the examination to the pass, and send it with the same; and the said pass, examination, and duplicates, may be read in any court of record in England, &c. as evidence. But the 32 Geo. 3. c. 45. Eng. enacts, (s. 1 & 3.) that when any justice of peace shall order to be conveyed by a pass, under his hand and seal, any rogue or vagabond, according to the provisions of the 17 Geo. 2. c. 5. *supra*, such rogues, &c. shall be either publicly whipped, or be sent to the house of correction, there to remain until the next general or quarter sessions, or for such less time as such justice of peace shall think proper; provided that such less time shall be at least for 7 days, and that such justice shall certify in the pass by which such person shall be ordered to be conveyed, that such person has been actually publicly whipped, or confined in the house of correction for at least 7 days: provided also that no person shall be so whipped or imprisoned, and conveyed

Vagrant passes.

s. 8.

*Duplicate of examination and pass to be filed.*32 Geo. 3.c.45.
s. 1 & 3. Eng.*Vagabonds, &c. conveyed by a vagrant pass, to be previously whipped or sent to house of correction.**Certificate thereof.*

*But such persons
to be first con-
victed of va-
grancy.*

*Females not to
be whipped.*

veyed by a pass as a rogue or vagabond, who shall not have committed an act of vagrancy within the meaning of the 17 Geo. 2. c. 5. *supra*, and who shall not have been convicted thereof. And whenever any female shall be guilty of any offence for which she shall be convicted as a rogue and vagabond, or incorrigible rogue, before any justice of peace, or the court of general or quarter sessions, such justice or court shall, in no case, inflict the punishment of whipping upon such female rogue, &c.

*Certificates to
accompany pas-
ses.*

17 Geo. 2. c. 5.
s. 10. Eng.

s. 11.

*Duty of officers
with such pass,
&c.*

By the 17 Geo. 2. c. 5. s. 10. Eng. the justice who makes the pass, shall cause likewise to be delivered to the constable, or other officer appointed to convey them, a certificate ascertaining how they are to be conveyed, by horse, cart, or on foot, and what allowance such officer is to have for conveying them, (according to the rates appointed by the general or quarter sessions of the peace as is herein-after directed,) in the form or to the effect herein set forth. By s. 11. the constable or officer who receives such pass or certificate, shall convey the person named in such pass in such manner, and in such time, as by the same pass is directed, the next direct way to the place where he is to be sent, if such place be in the same county, &c. where the said person was apprehended; but if the place to which the person so apprehended is to be sent, lies in some other county, &c. he shall deliver the said person to the constable or other such officer of the first town or place in the next county, &c. in the direct way to the place to which such person is to be conveyed, together with the said pass, and duplicate of examination, taking his receipt for the same; and such constable, &c. shall, without delay, apply to some justice of peace in the same county, &c. who shall make the like certificate as before (*mutatis mutandis*) and deliver it to the said constable, &c. who shall convey the person into the first parish or place in the next county, &c. in the direct way to the place to which such person is to be conveyed; and so in like manner from one county, &c. to another, till they come to the place to which such person is sent; and the constable, &c. who delivers such person to the church-warden or other per-
son

son ordered to receive him by such pass, shall deliver the said pass with the duplicate of examination, taking their receipt for the same; and if the church-warden, &c. who receives any person so sent, think the examination to be false, he is hereby empowered to carry the person so sent before some justice of peace, who, if he see cause, may commit such person to the house of correction till the next quarter-sessions, and the justices there may deal with such person as an incorrigible rogue; but the person so sent shall not be removed from the place to which sent, but by order of 2 justices, in the same manner as other poor persons are removed to the place of their settlement. But the 32 Geo. 3. c. 45. 52 Geo. 3. c. 45. s. 5. Eng. recites, that the present mode of conveying vagrants is frequently insufficient, from the misconduct and negligence of constables; and enacts, that the justices of peace, at the general or quarter sessions held for any county, &c. or any adjournment thereof, shall be empowered to make an order that all rogues and vagabonds apprehended in their respective counties, &c. and who are ordered to be conveyed by pass, shall be conveyed by the master of the house of correction, or his servants, or by a constable, as such justices shall think proper; and such justices may also make an order that all constables to whom rogues or vagabonds brought from another county, &c. are delivered, shall forthwith convey such rogues, &c. to the nearest house of correction in their county, &c. to be afterwards forwarded by the master of the house of correction, or his servants as aforesaid, and according to the provisions of the 17 Geo. 2. c. 5. *supra*. And the 35 Geo. 3. c. 101. Eng. further provides, (s. 2.) that in case any poor person shall be brought before any justice of peace for the purpose of being passed by a vagrant pass, and it shall appear to such justice that such person is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him so to do, the justice shall suspend the execution thereof, until he be satisfied that it may safely be executed; which suspension of, and subsequent permission to execute the same, shall be indorsed thereon, and signed by such justice: provided that nothing herein

Justices at sessions may direct the mode of conveying vagabonds, &c.

35 Geo. 3. c. 101. s. 2. Eng.

Justices may suspend the conveying of vagabonds, in cases of sickness, &c.

in

in shall alter or abridge the power of justices to pass or punish vagrants as directed by the 17 Geo. 2. c. 5. except so far as regards the power of suspending the vagrant pass, in manner and for the purposes aforesaid.

Vagrants shall pay for their passage if able.

17 Geo. 2. c. 5. s. 12. Eng.

By the 17 Geo. 2. c. 5. s. 12. Eng. it shall be lawful for any justice of peace, before whom any vagrants are carried, to order such vagrants to be searched, and their bundles to be inspected by the constable, tithingman, church-warden, or overseer of the poor, in the presence of the said justice; and if it appear, that any such vagrants have sufficient to pay their passage, either in the whole or in part, to the parish to which they belong, then said justice shall order so much of the money to be paid, or other effects found upon such vagrants to be sold, and employed towards the expense of taking up and passing such vagrants, as aforesaid, returning the overplus (if any) after deducting the charges of such sale, to such vagrants. By s. 16. the justices of peace of

s. 16.

Justices to limit the rates for passing vagrants

any county, &c. shall, at the general or quarter sessions of the peace, appoint what rates *per* mile, or otherwise, shall be made for the passing or maintaining rogues, vagabonds, or incorrigible rogues, and may likewise make such other orders for the more regular proceeding therein, within their respective jurisdictions, as they think proper; which rates and orders shall be observed by all justices, constables, and other persons within the same jurisdiction. By s. 17. in case any petty constable, or other such officer, of any parish or place, bring

s. 17.

Rates required to be paid to the petty constables.

to any high constable any such certificate as aforesaid, ascertaining how and for what rates he is required to convey any vagabonds, &c. together with a receipt from any constable, or other person to whom the person so to be conveyed was delivered, the said high constable shall pay unto such petty constable the rates ascertained by such certificate, taking from such petty constable such certificate, and his receipt for the same; and the said high constable shall be allowed the same by the treasurer of the county, &c. on his passing his accounts, upon his producing and delivering up such certificate and receipt, and giving his own receipt to such treasurer;

surer; and the justices at the general or quarter sessions, shall allow the same to such treasurer in his accounts, upon his producing and delivering up the vouchers aforesaid; and in case any high constable refuse or neglect to pay the said petty constable or other person, the rates ascertained by such certificate and receipt, on demand, it shall be lawful for any justice, by warrant, to levy double the sum by distress and sale of his goods, and thereout to allow the petty constable, or other person, the sum ascertained by such certificate and receipt, and such other recompense for his trouble, time, and expenses, as the said justices think fit; and in cities and places where there are no high constables, such petty constables or other officers, shall be allowed what they so pay pursuant to such certificate, in their accounts, upon their producing and delivering up such vouchers; or in case any master of a house of correction deliver such certificate and receipt to any treasurer, such treasurer shall pay the rates therein ascertained, to such master of a house of correction, taking his receipt; which shall be allowed to such treasurer in his accounts, on his producing and delivering up such vouchers. But the 26 Geo. 2. c. 34. s. 2. Eng. enacts, that all rogues, ^{26 Geo. 2. c. 34. s. 2. Eng.} vagabonds, and incorrigible rogues, sent by passes from one county, &c. into any other county, &c. shall be delivered to the constable, or other such officer of the first town, parish, or place in the next county, &c. and shall ^{Rates for conveying vagabonds, &c. to be paid by treasurer of county.} be by such constable, &c. conveyed forward in the manner by the 17 Geo. 2. c. 5. directed; and the treasurer of each county, &c. shall pay to such constable, &c. the charges of conveying such rogues, &c. upon such constables, &c. producing to him the certificate, and such other vouchers as are required by the said act to be delivered to the high constables; and the sums so paid shall be allowed by the justices to such treasurer in his accounts, on his producing the vouchers aforesaid, together with the receipt of said constable.

By the 17 Geo. 2. c. 5. s. 13. Eng. the constable or other officer of any parish or place in the counties of ^{Regulation for passing vagrants into Scotland.} Cumberland, Northumberland, Durham, or town of Berwick,

17 Geo. 2. c. 5.
s. 13. Eng.

s. 14.

*Regulations for
passing vagrants
into Ireland.*

wick, shall, upon any person being delivered to them by a pass and examination, according to the direction of this act, whose place of legal settlement is in Scotland, deliver the said examination to the clerk of the peace for such respective county, to be kept amongst the records of such county, and convey such person with the said pass into the next adjoining shire, stewartry, or place in Scotland, and deliver him to some constable or other officer of the next parish or district within the said shire, &c. taking his receipt for him; and such officer shall receive such person, and give such receipt, and dispose of him according to law; and in case any such vagrant after being so sent into Scotland, be found wandering, begging, or misbehaving in England, he shall be deemed an incorrigible rogue, and be punished as such. And by s. 14. every master of any ship, vessel, or packet-boat bound for Ireiand, the isles of Man, Jersey, Guernsey, or Scilly, shall, upon warrant to him directed, under the hand and seal of a justice of peace of the county, &c. where such ship, &c. lies, take on board the same such vagrants as be named in the said warrant, and convey them to such place in Ireland, &c. as such ship, &c. is to be so bound to, or shall arrive at; and for the charges thereof, such master shall take, and the constable or person who serves him with the said warrant shall pay him, such rate *per head*, as the justices of peace at their quarter sessions shall appoint; and such master shall, on the back of the warrant, sign a receipt for the money, and also for the vagrants; which warrant so indorsed, shall then be produced to the justice who signed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county in such manner as by this act the money to be paid for conveying vagrants is directed; and every master of such ship, &c. neglecting or refusing to receive or transport such vagrants, or to indorse and sign such receipt, shall forfeit £5. to the use of the parish or place where the offence shall be committed, to be levied by distress and sale of the ship, or of any goods within the same, by warrant of any justice for the same county, &c.

&c. Provided (s. 15.) that no master be compelled to take on board more than one vagrant for every 20 tuns burthen of such ship, &c.

s. 15.

Proviso.

By the 17 Geo. 2. c. 5. s. 19. Eng. the parish or place to which any rogue, vagabond, or incorrigible rogue, shall be conveyed by pass as aforesaid, shall employ in work, or place in some work-house or alms-house, the person so conveyed to them, until he betake himself to some service or employment; and in case any such person refuse to work, the overseers of the poor of the parish may cause such person to be carried before some justice of peace, in order to be sent to the house of correction, there to be kept to hard labour. By s. 28. where any persons offending against this act have been committed to the house of correction until the next general or quarter sessions, if, upon the examination of the persons so committed, no place can be found to which they may be sent by a pass, the said justices shall at said sessions, order such persons to be detained and employed in the house of correction, until they can provide for themselves, or until the justices at sessions can place them out in some lawful calling, as servants, apprentices, soldiers, mariners, or otherwise, either within this realm, or his majesty's colonies in America, which the said sessions are empowered to do in such manner as they think fit. By s. 9. where any offender against this act is committed to the house of correction until the next general or quarter sessions, and the justices at such sessions adjudge such person a rogue or vagabond, or an incorrigible rogue; they may order such rogue or vagabond to be kept in the said house of correction to hard labour for any further time not exceeding 6 months; and such incorrigible rogue for any further time not exceeding 2 years, nor less than 6 months, from the making such order of sessions; and during such confinement to be corrected by whipping, in such manner, and at such times and places within their jurisdictions as they think fit; and such person may afterwards be sent away, *mutatis mutandis*, as aforesaid; and if such person, being a male, is above the age of 12 years, the justices at their

Vagabonds, &c. when removed, to be set at work.

17 Geo. 2. c. 5. s. 19. Eng.

s. 28.

Vagrants whose settlements cannot be found, how to be ordered.

s. 9.

Justices at sessions how to punish vagabonds, &c.

sessions

sessions may, at any time before he is discharged, send him to be employed in his majesty's service, either by sea or land. And in case any such incorrigible rogue, so kept in the house of correction, before the expiration of the time for which he is so detained, break out or escape, or offend again in the same manner, such person shall be guilty of felony, and be transported for any time not exceeding 7 years.

Powers of justices as to persons furiously mad, &c.

17 Geo. 2. c. 5.
s. 20. Eng.

This statute (s. 20.) also provides as to persons who by lunacy, or otherwise, are furiously mad, or so disordered in their senses, as to be dangerous to be permitted to go abroad; that it shall be lawful for any 2 justices of peace where such lunatic, &c. is found, by warrant directed to the constables, church-wardens, and overseers of the poor of the parish or place, to cause such person to be apprehended, and kept safely locked up in some secure place within the county or precinct, as such justices shall direct, and, if such justices find it necessary, to be there chained, if the last legal settlement of such person be within such county, &c.; and if such settlement be not there, such person shall be sent to the place of his last legal settlement, by a pass, *mutatis mutandis*, as aforesaid, and shall be locked up or chained, by warrant of 2 justices of the county, &c. to which such person is to be sent; and the charges of removing, and of maintaining and curing such person during such restraint, (which shall be for such time only as such madness continues) shall be paid (being first proved upon oath) by order of 2 justices directing the church-wardens or overseers, where any goods, lands, or tenements of such person be, to seize and sell so much of the goods, or receive so much of the rents of the lands, as is necessary to pay the same, and to account for what is so seized, sold, or received, to the next quarter sessions; but if such person hath not an estate to pay the same, above what is sufficient to maintain his family, then such charges shall be paid by the parish or place to which such person belongs, by order of 2 justices directed to the church-wardens or overseers. But by s. 21.

s. 21.

Proviso.

this act shall not abridge the prerogative of the king, or the

the power of the lord chancellor, or the chancellor or vice chancellor of the county palatine of Lancaster, or of the chamberlain or vice-chamberlain of the county palatine of Chester, concerning such lunatics, or restrain any friend or relation of such lunatics from taking them under their own care.

By the 17 Geo. 2. c. 5. s. 18. Eng. in case any such petty constable, or other officer or master of any house of correction, counterfeit any such certificate, receipt, or note, or make, or knowingly permit to be made, any alteration therein, he shall forfeit £50.; and in case he convey not the persons to the place where they ought to be conveyed, or deliver them not to the proper person, or if any constable or other person refuse to receive any such person sent to them, or to give a receipt as before directed, the constable or other person shall forfeit £20. which forfeitures shall be levied by distress and sale of the offenders goods, by warrant of the justices where such offence shall be committed, at their general or quarter sessions; one moiety to be paid to the person who first makes information, and the other to the treasurer of the county or place, to be applied as part of the public stock. By s. 22. in case any constable, or other officer, or master of any house of correction, be negligent in his duty in the execution of this act, in any case for which no punishment is particularly provided, or in case any person disturb the execution of this act, or rescue any person apprehended or passing by virtue thereof, or be advising, aiding, or assisting to his escape, and be thereof convicted, upon the oath of a witness, before a justice where such offence is committed, such offender shall forfeit any sum not exceeding £5. nor less than 10s. to the use of the poor of the parish or place where the offence shall be committed, to be levied by distress and sale of the offender's goods, by warrant from such justice; and if sufficient distress cannot be found, it shall be lawful for such justice to commit the person so offending to the house of correction, there to be kept to hard labour for any time not exceeding 2 months. By s. 23. if any person shall knowingly permit any

Penalty for petty constables, &c. counterfeiting or altering certificates, &c.

17 Geo. 2. c. 5. s. 18. Eng.

s. 22.

Penalty for officers not doing their duty in execution of this act.

s. 23.

*Penalty for
sheltering vaga-
bonds.*

s. 24.

*Beggars with
children how to
be ordered.*

* *Vide s. 25.
vol. 1. p. 416.*

s. 26.

*Persons may
appeal to ses-
sions.*

s. 27.

Proviso.

any rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his house, barn, or other out-house or buildings, and shall not apprehend and carry him before some justice of peace, or give notice to some constable or other officer so to do; such person, being thereof convicted either on confession, or upon oath of a witness, before a justice of peace where such offence is committed, shall forfeit any sum not exceeding 40s. nor less than 10s. one moiety to the informer, and the other to the poor of the parish, to be levied by distress and sale of his goods, by warrant from such justice; and if any charge shall be brought upon any parish or place by means of any such offence, the same shall be answered to the said parish, &c. by such offender, and be levied by distress and sale of his goods as aforesaid; and if sufficient distress cannot be found, such offender shall be committed to the house of correction by the justice, for any time not exceeding a month. And whereas persons are often found offending against this act having children with them, this statute enacts (s. 24.) that if any such child, above the age of 7 years, be committed to the house of correction as aforesaid, it shall be lawful for the justices at the quarter sessions, if they see convenient, at any time before such child be discharged, to order such child to be placed out in such manner as they think fit, as a servant or apprentice to any person within their jurisdiction, who is willing to take such child, to serve such person till such child arrive at the age of 21 years, or for any less time: And if any offender who was found with such child, be again found with the same child (which was so placed out as aforesaid) offending against this act, such offender shall be deemed an incorrigible rogue. *By s. 26. any persons aggrieved by any act of any justice out of sessions, concerning the execution of this act, may appeal to the next general or quarter sessions of the peace of the county, &c. giving reasonable notice thereof, whose order thereupon shall be final. By s. 27. in all cities and towns where by special act of parliament the charge of passing vagrants is to be defrayed in other manner than is by this act directed, or where

where such vagrants, by virtue of special statutes, are to be apprehended and conveyed, to the places whither they are to be sent, by any persons or officers, other than those named for that purpose in this act, such charge shall be defrayed in such cities and towns as before the making of this act; and the person or officer liable to such service in the said cities, &c. by the said special acts of parliament, shall continue liable. And if any person be delivered to a beadle or constable within the city or liberties of the city of London, to be conveyed on as directed by this act, the said beadle, &c. shall not deliver such person in any other precinct, within the said city, &c. but in the next county, as directed by this act. By s. 33. the justices of peace at the general or quarter sessions, shall cause such sums as be necessary for the execution of this act, to be raised in the same manner as rates are directed to be raised by the 12 Geo. 2. c. 29. By s. 34. if any person be sued for any thing done in execution of this act, he may plead the general issue, and shall recover treble costs of verdict, nonsuit, or discontinuance.

s. 33.

Rates how raised for executing this act.

s. 34.

*Pleading.**Costs.*

To restrain and punish kearns, evil-doers, wasters, and idle men, the 25 Hen. 6. c. 7. Ir. enacts, that the sons of husbandmen and labourers, shall be labourers and travailers upon the ground, and in all other lawful and honest works and labours; upon pain of being imprisoned for a year, and making fine to the king, or the lord of the franchise, upon conviction before any judge of the king, or judge of franchise. And the 28 Hen. 8. c. 24. s. 4. Ir. further enacts, that every person who shall not be able to keep his children to school at the age of 10 years, shall put them to handicrafts or husbandry, upon pain of 6s. 8d. to be forfeit and inquired of as by s. 1 & 2. *post.* And because the dealing in horses was the occasion of idleness in the cottiers and other labouring men, and otherwise hurtful to the commonwealth, by increasing the price of horses; the 3 & 4 Ph. & M. c. 5. Ir. enacts, that no cottier, labouring man in husbandry, horse-boy, nor kernaugh, shall buy or bargain for any horse, garran, gelding, colt, or mare, upon pain

Sons of husbandmen and labourers shall continue at such works, on pain of fine and imprisonment.

25 Hen. 6. c. 7. Ir.

28 Hen. 8. c. 24. s. 4. Ir.

Persons not able to keep their children at school, to put them to trades or husbandry.

3 & 4 Ph. & M. c. 5. s. 1. Ir.

Penalty for cottiers, &c. dealing in horses.

of 40s. for each horse, &c. one moiety to the crown, and the other to such person as will sue for the same, by action of debt, by original writ or bill, in K. B. or C. B. wherein, &c. But by s. 3. any cottier, &c. may yearly from 1 August till 31 October, buy and have a horse, &c. to draw home corn, and other things. Provided (s. 2.) that this act shall not extend to any carter, carrier, miller, baker, or tanner, buying any horse, &c. for serving him in his faculty or trade. Lezers of corn are a description of vagrants or idle persons, that are the objects of the 25 Hen. 8. c. 1. Ir. which enacts, that no person, being strong to labour, shall gather or leze in any place in harvest time, except in their own fields; and no impotent person shall gather, &c. save in the parish where he dwells: and no man shall take any corn in harvest, for ripping or binding of corn, (by colour whereof they steal men's corn); And it shall be lawful for every person to take from every such lezer, and other such person as shall take corn for his labour, all such corn as they take or get by lezing, with such other stolen corn as shall be gotten with them, as well within their houses as without; one half to the lord of the soil where the same shall be found, and the other half to the taker. And the 28 Hen. 8. c. 24. Ir. further enacts, that every person who shall leze in the harvest time, shall not only lose all the corn that he shall leze, to any person that will seize the same, but shall also forfeit for every time, 12*d.* which forfeitures shall be to the lord of the soil, to be inquired of in the lord's court, and if he have no court, the forfeiture to be to the king. And by s. 2. every occupier of any field, who shall permit any person to leze therein, shall forfeit to the king 12*d.* By s. 3. every person who in the harvest season, shall keep in his habitation any person called, "ynmake," who shall so leze contrary to this act, shall forfeit for every ynmak 6*s.* 8*d.*; which forfeitures shall be to the lord of the soil, to be presented in his court or leet, and in default thereof to be inquired of in the king's court. By s. 5. this act shall not extend to persons who leze, by themselves or their servants, their own corn. And for the suppressing of cosherers and idle wanderers the

10 & 11 Car. 1.

s. 2. & 3.

Proviso.

25 Hen. 8. c. 1.
Ir.Lezing of corn
how restrained.And taking corn
for labour.28 Hen. 8. c. 24.
Ir.Penalty for
lezing of corn.

s. 2.

Penalty for per-
mitting persons
to leze corn.

s. 3.

Penalty for
keeping ynmakes
to leze corn.

s. 5.

Proviso.

10 & 11 Car. 1. c. 16. Ir. enacts, that if any person that hath not means and ability of his own, or sufficient means of support from his parents and kindred, that shall walk up and down the country, with his fosterers, or kindred and retinue, with one grey hound or more; or that shall cosher, lodge, or cess himself, his followers, horses, or grey hounds, upon the inhabitants of the country; or shall exact meat, or drink, or money from them, or shall crave any help in such sort as the poor people dare not deny the same, for fear of some scandalous rhyme or song to be made upon them, or some worse inconvenience; it shall be lawful for every justice of peace of each county, and for the justices of assize in their several circuits, to apprehend, (or cause, &c.) all such persons, and to bind them to their loyalty and allegiance, or to their good behaviour, as to such justices shall seem meet; and to commit the said persons to the common gaol of the said county, until they shall find bonds by recognizance as aforesaid, with good sureties; which justice of peace shall return such bonds, &c. at the next general sessions of the peace for said county: And all sheriffs, bailiffs, constables, and other subjects, shall be aiding to every justice of peace, and justices of assize, in the apprehending of said cosherers, and wandering idlers, when they shall be thereunto required, upon pain of such fine, as by the justices of peace at their general sessions, or before the justices of assize, shall be set upon them for such default. And by the 6 Ann. c. 11. s. 1. Ir. as amended by the 9 Geo. 2. c. 6. Ir. all loose idle vagrants, and such as pretend to be Irish gentlemen, and will not work, nor betake themselves to any honest trade or livelihood, but wander about demanding victuals, and coshering from house to house amongst their fosterers, followers, and others, and also loose persons of infamous lives and characters, shall, upon the presentments of the grand juries at the assizes of the respective counties where such persons keep or frequent, [*or upon the presentment of the grand juries at the king's bench, or at the sessions of *oyer and terminer*, &c. held after term for the county of the city of Dublin,

10 & 11 Car. 1.
c. 16. Ir.

*Cosherers, and
idle wanderers,
how punished.*

*Duty of sheriffs,
&c. in respect
to them en-
forced.*

6 Ann. c. 11.
s. 1. Ir.

*Certain vagrants
to be transported*

9 Geo. 2. c. 6.
s. 2. Ir.

* By 9 Geo. 2.
c. 6. s. 2. Ir.

*Unless security
given for good
behaviour.*

*Such vagrants
breaking gaol,
&c. how pun-
ished.*

s. 3.

*Grand juries at
sessions for
county and city
of Dublin only,
may present
such vagrants.*

s. 4.

*Persons pre-
sented as va-
grants, may
traverse.*

or county of Dublin, by order of said courts, or upon warrants from any of the judges of the king's bench, or justices of said court of *oyer and terminer*, &c. or any of them, or of any justice of the peace of the county where such presentment is made, be committed to the county gaol, until such person shall be sent on board his majesty's fleet, or to some of his plantations in America; and the judges and justices of such courts are hereby authorized to send such persons to said plantations for any term not exceeding 7 years, unless they give sufficient security, by recognizance, to be of good behaviour, before the judges or justices of such courts, or before such justice or justices of peace of the same county where such presentment is made, and within such time as by order of said courts, made upon such presentments, shall be appointed; and in case any such person so committed to gaol shall break gaol, or be at large in any part of this kingdom, or shall return from transportation before the expiration of the term, such person shall be liable to the same punishments and penalties as vagabonds ordered to be transported at the assizes are now subject to, and shall be triable in like manner.]

And by the 9 Geo. 2. c. 6. s. 3. it shall not be lawful for the grand jury at any quarter sessions of the peace for any county (the county of the city of Dublin, and county of Dublin, excepted,) to make any such presentments. By s. 4. it shall be lawful for every person so presented by any grand jury at the king's bench, the assizes, sessions of *oyer and terminer*, &c. and quarter sessions of the peace for the county of the city of Dublin, and county of Dublin, to traverse such presentment; which traverse shall be determined the same term, assizes, sessions, or quarter sessions, in which such presentments are made, (in case the persons so prosecuted are then in custody in the gaol of said county,) or at the next ensuing term, assizes, &c. according to the direction of the judge or justices before whom such presentment shall be made; and in the mean time such person shall continue in gaol, unless he shall give sufficient security by recognizance to be of good behaviour, before such judge
or

or justices as shall be appointed by the court where such presentment is made; and in case such person shall be at large at the time of such presentment, the court shall award process against him, and if such person shall be apprehended thereon, or by warrant from any justice of peace of the county where such person shall be so presented, he shall be committed to gaol, till the next term, assizes, &c. unless he shall give sufficient security, by recognizance before such justice of peace, as the court at the time of awarding process against him shall appoint; and in case such person so presented and apprehended, at the next term, assizes, &c. shall be found in gaol, and cannot then give security to be of good behaviour, or, in case of traverse, such traverse shall be found against him, then such person shall be sent on board his majesty's fleet, or be transported, &c. By the 11 & 12 Geo. 3. c. 30. s. 6. Ir. every man above the age of 15 years, who shall be found begging without such license as herein mentioned, s. 4. (*vide* vol. 1. p. 284.) and who shall not wear such badge as hereby appointed exposed to public view, on the back or shoulder, shall be committed to stocks by any justice of peace of the county, &c. where such person shall be found begging, and be so kept in stocks for any time not exceeding 3 hours for the first offence, and for every subsequent offence for any time not exceeding 6 hours; and every old persevering offender may be indicted and tried for such offence at the quarter sessions of the county, &c. where the party shall have offended, or any adjournment thereof; and if convicted shall suffer imprisonment in the common prison of the county, &c. for any time not exceeding 2 calendar months; and if again convicted of such offence at the quarter sessions, &c. may be sentenced by the said justices to be publicly whipped in any market town in said county, and again imprisoned as aforesaid for any time not exceeding 4 calendar months; and so in case of every subsequent conviction; and every female who shall be found begging without such license and badge, shall be confined in any place that shall be appointed for that purpose, by any justice of peace of the county, &c.

*Proceedings
thereon.*

11 & 12 Geo. 3.
c. 30. s. 6. Ir.

*Persons begging
without badge or
license, how
punished.*

s. 7.
Corporations in
respective coun-
ties to appoint
persons with sa-
laries to take up
such vagrants.

*Powers of jus-
tices in respect
to such vagrants*

s. 8.

*Vagrants how
ordered in the
work houses of
the respective
counties.*

&c. for the first offence for any time not exceeding 3 hours, and for every subsequent offence for any time not exceeding 6 hours; and every old and persevering such female offender shall be proceeded against at the sessions as aforesaid. And by s. 7. the corporations established by this act are empowered to appoint such and so many persons as they shall think fit, in the counties, cities, or towns, within their jurisdictions, at moderate salaries, to seize such persons whom they shall find begging without such license and badge, and carry them before the next justice of peace for the county, &c. in which such persons shall be found begging, who on oath made before them that the party has offended as aforesaid, may commit such party to the stocks as aforesaid; and the justices of peace, before whom such offenders whose crimes are referred to the sessions shall be brought, are hereby authorized to examine witnesses on oath, and to take written informations, and on the oath of any witness to commit the party accused to prison, to be proceeded against as aforesaid, unless such party can procure bail to appear at the sessions. And all justices of peace within their respective counties, &c. are required, on their own view, to cause every person who shall beg without such license, &c. to be seized and put in stocks or confinement as aforesaid; and also, on their view, to commit such persevering offenders to prison, to be proceeded against as aforesaid, specifying in the warrant of committal the crime of the party so committed; and so all justices of peace are required to do likewise, where these committals are grounded on an information on oath, that the parties committed may be bailed by any other justice of peace, if he may procure bail before trial, to appear at the next quarter sessions. By s. 8. the corporations established by this act, are required to seize every strolling vagrant capable of labour, who hath no place of abode, and who doth not live by his labour or industry, and every person above the age of 15 years, who shall beg publicly without such license or badge as in s. 4. or after the term of such license shall be out and not renewed, and every strolling prostitute capable of labour,

labour, and to commit the said persons last mentioned to divisions allotted to them in the said work-houses, and there keep them to hard labour, maintaining them properly; and in case of refusal or ill behaviour, to inflict reasonable corporal punishment on the offenders, and to keep all the said disorderly persons so in restraint for the 1st time of commitment for any time not exceeding 2 calendar months; and if being set at liberty, or having escaped, they shall return to their former courses of life, such offenders shall be so kept in restraint after a 2nd commitment for any time not exceeding 4 calendar months; and after a 3rd commitment, for any time not exceeding a year; and after a 4th commitment for any time not exceeding 2 years; and if any of the said disorderly persons being set at liberty a 4th time, shall return to his former course of life, then for any time (not exceeding 4 years) the corporation of that county, &c. where such offender shall be found so transgressing, shall think fit: and so again after the expiration of that term. And by s. 10. if any person shall go about begging with a counterfeit badge or license, or shall beg with a borrowed badge, &c. or with a badge, &c. intended for another person, such offender, being convicted of such offence before 2 justices of peace, (summarily), shall be committed to the common gaol of the county for 10 days. By s. 11. no person for any of the offences herein, shall be continued in the stocks after 4 o'clock in the afternoon from 1st of December to 1st of March, excepting where beggars in that interval shall be caught begging contrary to this act, and be committed to stocks after 4 in the afternoon, or in the evening for such offence; nor shall any person be continued in stocks for any of the offences herein, at any time of the year after sunset, excepting where beggars shall be caught after sunset in the act of begging, and shall be committed to stocks for that offence.

*Punishment for
1st 2nd 3rd and
4th offence,
&c.*

s. 10.

*Persons counter-
feiting badges
&c. how pun-
ished.*

s. 11.

*Proviso as to
punishing per-
sons with stocks.*

IX. To the head of offences against *public economy*, § 9.
may be referred the 10 Edw. 3. st. 3. E. & I. which or-
dained that no man should be served at dinner or sup-
per, or other time, with more than 2 courses, except
upon

*Public diet,
&c. regulated,
10Edw.3. st. 3.
E. & I.*

5 Edw. 4. c. 3.
Ir.

28 Hen. 8. c. 15.
Ir.

*English habit
and language,
&c. to be used
in Ireland.*

upon certain great holidays or festivals specified in this ordinance. And the 5 Edw. 4. c. 3. Ir. and 28 Hen. 8. c. 15. Ir. which required Irishmen to go apparelled like Englishmen, and wear their beards after the English manner, and to take English surnames, and to speak commonly the English language, respect this branch of public economy which relates to the public habit, order, and mode of life: But as these statutes are obsolete or antiquated, it is sufficient thus briefly to notice them.

§ 10.

*Penalty of
maintenance of
a house
for unlawful
games.*

33 Hen. 8. c. 9.
s. 11. Eng.

s. 12.

*Penalty for
haunting such
houses.*

s. 14.

*Magistrates
may repress un-
lawful games
and punish of-
fenders.*

s. 15.

*And search
houses where un-
lawful games
are kept.*

X. Next as to the offence of *gaming*: By the 33 Hen. 8. c. 9. s. 11. Eng. no person shall for gain, lucre, or living, keep any common house, alley, or place of bowling, coiting, cloysh, cayls, half-bowl, tennis, dicing table or carding, or any other game prohibited by statute heretofore* made, or any unlawful new game; upon pain to forfeit for every day 40s. And by s. 12. every person using and haunting any of the said houses and plays, and there playing, shall forfeit 6s. 8d. By s. 14. it shall be lawful to all justices of peace, mayors, sheriffs, bailiffs, and other head officers within every city, &c. to enter into all places where such games shall be suspected to be used; and as well the keepers of the same, as also the persons there resorting and playing, to imprison, until the keepers of said games have found sureties to the king's use, no longer to use such house, game, or place; and also that the persons there found be bound no more to play or haunt in or at said places. And by s. 15. the mayors, &c. shall make search weekly, or at furthest once every month, in all places where any such houses shall be suspected to be kept; and if the said mayors, &c. do not make search once every month, if the case so require, according to this act, and do not execute the same in all things, every such mayor, &c. shall forfeit for every month

* The other games prohibited by the 12 Ric. 2 c. 6. E. & I. and 11 Hen. 4. c. 4. E. & I. were foot-ball and hand-ball, and casting of the stone, and other such importune games, which are forbidden to be used by servants of husbandry, and labourers and servants of artificers and victuallers. And by the 17 Edw. 4. c. 3. E. & I. hand in and hand out, and qnek-borde, are also prohibited amongst other games. And by the 11 Hen. 7. c. 2. Eng. and 19 Hen. 7. c. 12. Eng. playing at tables was declared to be unlawful. But these statutes are repealed as to their penalties by the 33 Hen. 8. c. 9. s. 17. *supra*.

month, 40s. By s. 16. no artificer or craftsman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariner, fisherman, waterman, or any serving-man, shall play at tables, tennis, dice, cards, bowls, clash, coyting, logating, or other unlawful game, out of Christmas, under pain of 20s. and in Christmas to play at said games in their masters' houses, or in their masters' presence; and no person shall play at bowls in open places out of his garden or orchard, upon pain to forfeit 6s. 8d.; and all justices of peace, mayors, and other head officers, knowing any person using unlawful games, shall have power to commit such offender to ward, until he be bound by obligation to the king's use, in such sum as the said justices, &c. shall think reasonable, that they shall not use such unlawful games. By s. 17. all suits upon this statute shall be commenced within the year after the offence committed. And by s. 18. where any such forfeitures shall be within any franchise or leet, the lord shall have the one moiety, and the other moiety to any of the king's subjects that will sue for the same, in any of the king's courts; and where such forfeiture shall be out of any franchise, &c. one moiety shall be to the king, and the other to any subject that will sue, &c. By s. 19. all mayors and other head officers shall, 4 times in the year, make proclamation of this act in every market within their jurisdictions. And by s. 20. the justices of gaol-delivery, assizes, and justices of peace, shall cause the same to be proclaimed in their circuits and sessions. Provided (s. 22.) that it shall be lawful for every master to license his servants to play at cards, dice, or tables, with their master, or with any other gentlemen repairing to their master, in his house, or in his presence. And by s. 23. it shall be lawful to every nobleman, and other having lands, &c. or other yearly profit for term of life, in his own right, or in his wife's right, to the yearly value of £100. to license his servants or family to play within the precincts of their houses, at cards, dice, tables, bowls, or tennis, as well among themselves as others repairing to the same houses. By the 2 Geo. 2. c. 28. s. 9. Eng. where it shall

s. 16.

*Persons prohibited to play at unlawful games out of Christmas.**Botels how far prohibited.*

s. 17.

Limitation for prosecutions.

s. 18.

Forfeitures how disposed of.

s. 19 & 20.

This statute proclaimed.

s. 22 & 23.

Provisoos as to servants.

2 Geo. 2. c. 28. s. 9. Eng.

*Justices may
commit such of-
fenders to pri-
son, unless re-
cognizance en-
tered into.*

18 Geo. 2. c. 34.
s. 1. Eng.

*Penalty for
keeping place
for playing roly-
poly, &c.*

s. 2.

*Penalty of those
playing.*

s. 6.

Proviso.

s. 4.

*Attendance of
witnesses en-
forced.*

s. 5.

*Who may be
witnesses.*

s. 7.

shall be proved on the oath of 2 witnesses, before any justice of peace, as well as where such justice shall find upon his own view, that any person hath used any unlawful game contrary to the 33 Hen. 8. c. 9. the justice shall have power to commit such offender to prison, unless he enter into recognizance with sureties, or without, at the discretion of the justice, that he shall not play at such unlawful games. By the 18 Geo. 2. c. 34. Eng. no person shall keep any house, room, or place for playing, or permit any person within such house, &c. to play at the game of roulet, otherwise roly-poly, or at any other prohibited game, with cards or dice, otherwise to incur the penalties of the 12 Geo. 2. c. 28. viz. a forfeiture of £200. And by s. 2. if any person play at said game of roulet, or roly-poly, or at any game with cards or dice, prohibited by law, he shall incur the penalties, (viz. of £50.) and be liable to such prosecution as is directed by the 12 Geo. 2. c. 28. Eng. *post.* By s. 6. nothing in this act shall prevent any person from playing at any game within any of the royal palaces, wherein his majesty shall then reside. By s. 4. persons who have jurisdiction to hear informations upon the statutes against gaming, upon any information exhibited before them for any offence committed against this act, (or against the 12 Geo. 2. c. 28. or 13 Geo. 2. c. 19. *post.*) may summon any person, other than the party accused, to give evidence; and in case such person neglect to appear, or refuse to give evidence, he shall forfeit £50. to be levied by distress and sale of goods, by warrant of such persons issuing such summons; and in case such person have not sufficient goods whereon to levy the said £50. he shall be committed to the common gaol for the county or place where such offence shall be committed, for 6 months. And by s. 5. no person, other than the plaintiff and defendant in the cause, shall be incapacitated from being a witness, touching any offence against the laws for preventing gaming, by reason of having played, betted, or staked, at any prohibited game. And by s. 7. no privilege of parliament shall be allowed to any person against whom any prosecution

cution shall be commenced for keeping any common gaming-house, or any place for playing at any prohibited game. By the 30 Geo. 2. c. 24. s. 14. Eng. if any person licensed to sell any sort of liquors, or who shall sell, or suffer the same to be sold in his house, out-house, grounds, or apartments thereto belonging, knowingly suffer any gaming with cards, dice, draughts, shuffleboards, mississippi, or billiard tables, skittles, nine-pins, or with any other implement of gaming, in his houses, &c. by any journeymen, labourers, servants, or apprentices, and be convicted on his confession, or on the oath of a witness, before any justice of peace for the county or place wherein the offence is committed, within 6 days after such offence, he shall forfeit 40s. and for every like offence which he shall afterwards commit he shall forfeit £10. &c. which forfeitures shall be levied by distress, &c. by warrant, &c. and three fourths of all sums so forfeited shall be paid to the church-wardens of the parish where such offence is committed, for the use of the poor; and the other 4th part to the person on whose information the party is convicted. And by s. 15. if any journeyman, apprentice, or servant, game in any house, out-house, ground, or apartments thereto belonging, wherein any liquors are sold, and complaint be made on oath before any justice of peace for the county, &c. where the offence is committed, such justice shall issue his warrant to some constable, tithingman, head-borough, or other peace officer of the parish or place wherein the offence is charged, or where the offender resides, to apprehend and carry such offender before some justice acting for the county, &c. where the offence is committed, or the offender resides; and if the person apprehended be convicted by the oath of a witness, or on confession, he shall forfeit any sum not exceeding 20s. nor less than 5s. as the justice shall think fit; and one fourth of such forfeiture shall be paid to the person on whose information the party is convicted, and the other three fourths applied for the use of the poor of the parish wherein the offence is committed, and shall be paid to the overseers of the poor of such parish; and if

No privilege of parliament.

30 Geo.2.c.24.
s. 14. Eng.

Penalty of publicans permitting journeymen, &c. to game in their houses.

s. 15.

Justices to issue warrants for apprehending such journeymen, &c.

Penalty for such journeymen, &c. offending.

the

s. 16.
Justices to enforce the attendance of witnesses.

the party convicted shall not forthwith pay the sum so forfeited, such justice shall, by warrant, commit such offender to the house of correction, or some other prison of the county, &c. in which he shall be apprehended, to be kept to hard labour for any time not exceeding a month, or until he pay the money forfeited. By s. 16. any justice of peace of any county, &c. upon complaint upon oath of any offence against this act, within the same county, &c. shall issue his warrant for bringing before him, or some other justice, the person charged with such offence; and the justice before whom such person shall be brought, shall hear, &c. such complaint; and if it appear by the oath of any person to the satisfaction of such justice, that any person within the jurisdiction of such justice can give evidence on behalf of the prosecutor or of the person accused, and who will not voluntarily appear to give evidence, such justice shall issue his summons to convene every such person before him to be examined upon oath; and if such person shall not appear, and no just excuse be offered, then (after proof by oath of such summons having been duly served) such justice shall issue his warrant to bring such witness before him, and on the appearance of such witness, such justice shall examine him upon oath; and if he refuse to be so examined, without offering any just cause for such refusal, it shall be lawful for such justice, by warrant, to commit every person so refusing to the public prison of the county, &c. for any time not exceeding 3 months; and if such justice deem the evidence of such witness material, such justice may bind over such witness (unless a *feme covert*, or one under the age of 21 years,) by recognizance in a reasonable penalty, to appear and give evidence at the next general or quarter sessions of the peace, or sessions of *oyer and terminer*. By s. 17. no persons charged on oath with any offences punishable by this act, and which require bail, shall be admitted to bail before 24 hours notice be proved, by oath, to have been given in writing to the prosecutor, of the names and places of abode of the bail, unless the bail offered be known to the justice, and he approve of them. And every such offender bound over to the
general

s. 17.
Offenders not to be bailed, till notice to prosecutor.

general quarter-sessions of the peace, or gaol delivery, *Offenders where tried.* to answer such offences, shall be tried at the quar-

ter-sessions of the peace, or sessions of *oyer and terminer*, &c. held next after his being apprehended, unless the court think fit to put off the trial on just cause.

By s. 18. in all actions, trials, and other proceedings *s. 18.*

in pursuance of this act, any inhabitant of the parish or place in which the offence is committed, shall be *Inhabitants competent witnesses.* admitted to give evidence, notwithstanding his being an

inhabitant. By s. 19. the justice before whom any person shall be convicted as prescribed by this act, shall *s. 19.*

cause such conviction to be drawn in the form or to *Convictions how drawn, &c.*

the effect herein set forth: And shall cause the same to

be written on parchment, and transmitted to the next

quarter-session of the peace for the county, &c. wherein

such conviction was had, to be filed amongst the records

of said sessions. And by s. 21. any person so convicted *s. 21.*

may appeal to the next quarter-sessions of the peace for

the county, &c. where such judgment is given; and the *Appeal may be to quarter-sessions.*

execution of the judgment shall be suspended, the

person convicted entering into a recognizance at the

time of the conviction, with 2 sureties in double the sum

adjudged, conditioned to prosecute such appeal with *Recognizance thereupon.*

effect, and to abide the judgment of the justices in ses-

sions, which recognizance the justices before whom such

conviction shall be, shall take; and the justices in ses-

sions shall finally determine the appeal, and award such

costs as appear just to be paid by either party; and if *Costs of appeal.*

upon hearing the appeal the judgment be affirmed, such

appellant shall immediately pay the sum adjudged, with

such costs as the justices in sessions award; or in default

of making such payments, shall suffer the pains and

penalties by this act inflicted upon persons who neglect

to pay the respective forfeitures. By s. 20. no *certiorari* *s. 20.*

shall be granted to remove any proceeding in pursuance *No certiorari allowed.*

of this act. And by s. 22. no person by this act punished *s. 22.*

for any offence, shall be punished for the same offence *Proviso.*

under any other law. And if any action be commenced

for any thing done in pursuance of this act, the defen-

dant may plead the general issue, and shall recover *Pleading.*

treble

Costs.

treble costs of verdict, nonsuit, discontinuance, or judgment upon verdict or demurrer. No statute, of a general nature, has been made in Ireland to restrain the vice or offence of gaming amongst the lower classes in society, similar to the 33 Hen. 8. c. 9. 2 Geo. 2. c. 28. 18 Geo. 2. c. 34. or 30 Geo. 2. c. 24. *supra*.

Penalty for playing without ready money, or losing more than £100. at a time.

16 Car. 2. c. 7. s. 3. Eng.

*No sum limited in 10 W. 3. c. 17. Ir.

†“Dublin” in 10 W. 3. c. 11. Ir.

9 Ann. c. 14. s. 1. Eng.

All securities for money won by gaming void.

The following statutes seem to be rather calculated to restrain the offence of gaming in high life. By the 16 Car. 2. c. 7. s. 3. Eng. if any person shall play at any game, other than with ready money, or shall bet on the sides or hands of such as do, and lose any money or other thing [*exceeding £100. at one time,] and shall not pay down the same at the time, the party who loseth [*above £100.] shall not be compellable to pay the same, but all judgments, statutes, recognizances, mortgages, conveyances, bonds, bills, covenants, agreements, and other acts, which shall be obtained for security or satisfaction of or for the same, shall be void; and the person winning shall forfeit treble the value; one moiety to the king, and the other moiety to such as shall sue for the same within one year after such offence, in any court of record at [†Westminster;] and such plaintiff shall have treble costs. And the 9 Ann. c. 14. Eng. further enacts, that all notes, bills, bonds, judgments, mortgages, or other securities, or conveyances, given by any person, where the whole or any part of the consideration of such securities, &c. shall be for money, or other valuable thing, won by gaming, or playing at cards, dice, tables, tennis, bowls, or other game, or by betting on the sides or hands of such as game, or for repaying any money knowingly lent for such gaming, or lent at the time and place of such play to any person so gaming or betting, shall be void; and where such securities or conveyances shall be of lands, &c. or shall incumber or affect the same, such securities, &c. shall enure for the use of such person as should be entitled to such lands, &c. in case the grantor or person encumbering the same had been dead; and all conveyances made for preventing of such lands, &c. from coming to such person, shall be void. And by

s. 2.

s. 2. any person who shall at any time or sitting, by playing at cards, dice, tables or other game, or by betting, &c. lose in the whole the value of £10. and shall pay or deliver the same, or any part thereof, the person so losing, &c. shall be at liberty, within 3 months, to recover the money or goods lost, or any part thereof, from the winner, with costs, by action of debt founded on this act, in any court of record, wherein, &c.; in which actions it shall be sufficient for the plaintiff to allege, that the defendant is indebted to the plaintiff, or received to the plaintiff's use the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him according to the form of this statute, without setting forth the special matter; and in case the person who shall lose, shall not, without collusion, sue, and with effect prosecute for the same, it shall be lawful for any person, by such action, to recover the same, and treble the value thereof, with costs; the one moiety to the use of the person that will sue, and the other to the poor of the parish where the offence shall be committed.

The loser of £10. at cards, &c. may sue for the money within 3 months.

If loser does not sue, any other person may; and recover treble costs.

A moiety thereof to the poor.

By s. 3. every person who by this act shall be liable to be sued, shall be obliged to answer upon oath such bill as shall be preferred for discovering the money or other thing so won at play. And the 18 Geo. 2. c. 34. Eng. provides (s. 3.) that in case any bill be filed in any court of equity for any sum of money won contrary to the meaning of the 9 Ann. c. 14 *supra*, it shall be lawful for such court to decree thereupon, and to enforce such decree as in other causes. [*The 9 Ann. c. 14. Eng. further enacts (s. 4.) that upon the discovery and repayment of the money or other thing so discovered, the person who shall discover the same shall be indemnified from any further penalty.] And by s. 5. every person who shall† at one sitting win above the sum or value of £10. being convicted upon an indictment or information, shall forfeit 5 times the value of the money or other thing won, to be recovered

s. 2.

s. 3.

The person sued shall answer bill filed for discovery.

18 Geo. 2. c. 34. s. 3. Eng.

Court of equity to proceed upon such bills, as in other cases.

s. 4.

Person discovering and repaying, indemnified from other penalties.

s. 5.

Penalty for persons winning above £10. at one time.

* This clause not in the 11 Ann. c. 5, Ir.

† " Within 24 hours, or" here added in 11 Ann. c. 5. Ir.

- recovered by such person as shall sue for the same.
- Persons having no way of living but by gaming, to be bound to their good behaviour.*
 s. 6. By s. 6. it shall be lawful for any 2 justices of peace to cause to be brought before them, every person, within their limits, whom they shall have just cause to suspect to have no visible estate or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such persons shall not make it appear, that the principal part of their expenses is not maintained by gaming, then such justices shall require of them securities for their good behaviour for 12 months; and in default of their finding such securities, commit them to the common gaol until they find such securities. And by s. 7. if any such person shall, during the time for which he shall be so bound to the good behaviour, at any one time play or bet for any thing exceeding in the whole the value of 20s. such playing shall be a forfeiture of the recognizance. By s. 9. nothing in this act shall hinder any person from gaming [*within the palaces of St. James or Whitehall, during such time as her majesty, &c, shall be resident therein, or in any other royal palace where her majesty, &c. shall be resident; so as such playing be not in any house, the freehold or inheritance whereof shall be out of the crown, or in lease,] and so as such playing be for ready money only. And by the 18 Geo. 2. c. 34. s. 8. Eng. if any person win or lose at play, or by betting, at one time, the value of £10. or within 24 hours the value of £20. he shall be liable to be indicted for such offence within 6 months, either before the justices of the king's bench, assize, or gaol delivery, or grand sessions; and being convicted shall be fined five times the value of the sum so won or lost; which fine, (after such charges as the court shall allow to the prosecutors and evidence,) shall go to the poor of the parish or place where such offence is committed. Provided (s. 9.) that if any person so offending shall discover any other person so offending, so that he be thereupon convicted,
- Such recognizance how forfeited.*
 s. 7.
- Proviso.*
 s. 9.
- Penalty for persons losing £10. at one time, or £20. in 24 hours.*
 18 Geo. 2. c. 34. s. 8. Eng.
- Offenders discovering others, discharged.*
 s. 9.

* "Within the castle of Dublin, or other house of the king, during the residence of the lord lieutenant therein" by 11 Ann. c. 5. Ir.

victed, he shall be discharged from all penalties by reason of such offence, if he hath not been before convicted, and shall be admitted an evidence. By s. 10. nothing in this act shall repeal or invalidate the 9 Ann. c. 14. *supra*. The 10 W. 3. c. 11. Ir. is the corresponding statute in Ireland to the 16 Car. 2. c. 7. *supra*. And the 11 Ann. c. 5. Ir. has also followed the 9 Ann. c. 14. Eng. *supra*, with such deviations as are noted in the margin : but this Irish statute further enacts (s. 8.) that no person shall play at any game, with dice or cards, within any shop, or in any room or place thereunto belonging, for any money or goods, and no shop-keeper, or other person keeping such shop, &c. shall encourage, or knowingly permit any person to play at any game with dice or cards for any money or goods, within their shops or warehouses, or any room or place belonging to such shops, &c. and which belong to the owners or possessors of such shops, &c. upon pain of forfeiting £10. to be recovered, with costs, from such offender, and to be distributed in such manner as herein-before enacted in relation to persons that shall win or lose any sum exceeding £10. as aforesaid. And by s. 9. if any person play at any game with dice or cards in such shop, &c. against the will, and without the consent of the occupiers of the same, then if such shop-keeper or house-keeper, or any of his servants or family, shall, within 28 days after such offence, give information upon oath, before a justice of peace or other magistrate, against the person who shall so offend, such shop-keeper or house-keeper, shall not be liable to said penalty : and such justice, &c. shall issue a warrant against every such offender, and commit him to prison until he find security for his good behaviour, besides being liable to the penalties aforesaid. The 18 Geo. 2. c. 34. Eng. has not been adopted or followed by any Irish statute.

To restrain the offence of cheating at play, or deceitful gaming : the 16 Car. 2. c. 7. Eng. enacts (s. 2.) that if any person shall, by any fraud, deceit, or unlawful device, in playing at cards, dice, tables, tennis, bowls, kittles, shovel-board, or in or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes or games, or

s. 10.

Proviso.

10 W. 3. c. 11.

11 Ann. c. 5.
Ir.

s. 8.

*No shopkeeper
to permit gam-
ing in his shop,
&c. on pain of
£10.*

s. 9.

*Proviso.**Cheating at
play how pun-
ished.*16 Car. 2. c. 7.
s. 2. Eng.

by bearing a part in the stakes, or by betting on the sides of such as play, act, ride or run, win any money or other valuable thing; he shall forfeit treble the value, the one moiety to the king, and the other moiety to the person who shall lose the money, &c. so as such loser sue for the same within 6 calendar months; and in default of such prosecution, the same other moiety to such person as shall sue for the same within one year after the 6 months expired, in any of his majesty's courts at [*Westminster]; and such plaintiff shall recover treble costs. And by the 9 Ann. c. 14. s. 5. Eng. if any person shall, by any fraud, &c. in playing at cards, dice, or any games, or by bearing a part in the stakes, or by betting, win any money or other valuable thing, and being convicted upon indictment or information, he shall forfeit 5 times the value of the money or other thing won, and shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; such penalty to be recovered by such person as shall sue for the same, as in s. 2. *ante* p. 799. The 10 W. 3. c. 11. Ir. and 11 Ann. c. 5. Ir. contain similar provisions.

The 10 & 11 W. 3. c. 17. Eng. declares and enacts, that all lotteries are public nuisances, and that all grants, patents, and licenses for lotteries, are void, and against law. And by s. 2. no person shall publicly or privately keep open, or expose to be played at, or draw, play, or throw at, any lottery, either by dice, lots, cards, balls, numbers, figures, or any other way; and every person that shall open, or shew to be played, thrown, or drawn at, any lottery, shall forfeit [†£500.] to be recovered by information, bill, plaint, or action at law, in any of his majesty's [‡courts at Westminster,] one third part to the king, one other third to the poor of the parish where the offence shall be committed, and the other third, with double costs, to the party that shall sue for the same; and the parties offending shall likewise be prosecuted as [||common rogues]. And by s. 3. every person that shall play, throw, or draw at any lottery, shall forfeit [§£20.] one third part to the king, one other third to the poor of the parish, &c. and the other third, with double costs, to

*"Dublin" in
10W.3.c.11.Ir.
9 Ann. c. 14.
s. 5. Eng.

*Further penalty
and punishment
for such offence.*

10 W. 3. c. 11.
Ir.
11 Ann. c. 5.
Ir.

*Lotteries public
nuisances.*

10 & 11 W. 3.
c. 17. Eng.
s. 2 & 3.

*Penalty for
keeping or play-
ing at lotteries.*

† "£100." in
11 Ann. c. 6. Ir.

‡ "Four Courts
at Dublin" in
11 Ann. c. 6. Ir.

|| "Public
cheats" in
11 Ann. c. 6. Ir.

§ "£10." in
11 Ann. c. 6. Ir.

to the party that shall sue (as in s. 2.) for the same. By the 9 Ann. c. 6. s. 56. Eng. justices of peace, mayors, bailiffs, head officers, constables, and other civil officers, are required to use their utmost endeavours to prevent the drawing of any such unlawful lottery; and every person who shall set up, or, by writing or printing, publish the setting up any unlawful lottery, with intent to have such lottery drawn, shall forfeit £100. to be recovered in any of her majesty's courts at Westminster; one third thereof to the crown, one other third to the poor of the parish where the offence shall be committed, and the other third, with full costs, to the party who shall sue for the same. By the 10 Ann. c. 26. s. 109. Eng. (which supersedes the 9 Ann. c. 6. s. 57-8. Eng.) every person who shall set up or keep any office or place for making insurances on marriages, births, christenings, or service, or any office under the denomination of sales of gloves, of fans, of cards, of numbers, of the queen's picture, for the improvement of small sums of money, or the like offices, under the pretence of improving small sums, shall forfeit £500, to be recovered with costs by action of debt, &c. in any court of record; one third part thereof to the crown, one other third to the poor of the parish, and the other third, with full costs, to the person who shall sue for the same; and every printer or other person who shall publish the keeping any such office, shall forfeit £100. to be recovered and distributed in like manner. And by the 8 Geo. 1. c. 2. s. 36. Eng. every person who shall erect, set up, or keep any office or place under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money, or shall sell or expose to sale any houses, &c. by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish, (or cause, &c.) proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided amongst them by the chances of the prizes in some public lottery; or shall deliver out tickets to persons advancing such sums, to entitle them to a share of the money, according to such

9 Ann. c. 6.
s. 56. Eng.

*Justices, &c. to
suppress unlaw-
ful lotteries.*

*Penalty for set-
ting up, &c.
such lotteries.*

10 Ann. c. 26.
s. 109. Eng.

*Penalty for
keeping offices
for insurances
on marriages.*

8 Geo. 1. c. 2.
s. 36. Eng.

*Penalty for per-
sons erecting
offices for sale of
houses, &c. by
way of lottery.*

proposals or schemes; or shall make, print, or publish, (or cause, &c.) any proposal or scheme of the like kind, under any denomination, [*and shall be thereof convicted on the oath of a witness, by 2 justices of peace of the county, &c. where such offence shall be committed, or the offender shall be found,] he shall, over any penalties by any former act made against private or unlawful lotteries, forfeit £500. one third to the king, one other third to the informer, and one third to the poor of the parish where the offence shall be committed, to be levied by distress, &c. by warrant, &c. and shall also be committed to the county gaol for one year, and till the £500. be paid: Provided that persons aggrieved may appeal to the next quarter sessions. And by s. 37. all persons who shall be adventurers in, or shall contribute to such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, to be recovered with costs in any court of record at Westminster, one moiety to the king, the other to him who shall sue, &c. And by the 12 Geo. 2. c. 28. Eng. if any person shall erect, set up, or keep any office or place under the denomination of a sale of houses, land, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, by way of lottery, or by lots, tickets, numbers or figures, cards or dice; or make, print, advertise, or publish, (or cause, &c.) schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided amongst them by chances of the prizes in some public lottery allowed by act of parliament,* or deliver, (or cause, &c.) tickets to the persons advancing such sums, to entitle them to a share of the money according to such schemes; or expose to sale any houses, &c. by any game or device to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine or device of chance of any kind; such person being convicted before a justice of peace for any county [or division], or before the mayor or other justice for any city

Vide 27 Geo. 3. c. 1. Eng. post.

Appeal to sessions.

s. 37.

Adventurers in such lotteries, &c. to forfeit double the sum paid.

12 Geo. 2 c. 28. s. 1. Eng.

Deceitful games and subscriptions under the denomination of sales of houses, &c. restrained.

Mode of conviction.

* “ In Great Britain or Ireland, or in any foreign lottery, here added in 13 Geo. 2. c. 8. Ir.

city or town corporate, upon the oath of a witness, or upon the view of such justice, &c. or on the confession of the party, shall forfeit [*£200.] to be levied by distress ^{*“£100.” in 13Geo.2.c.8.Ir.} and sale of goods, by warrant of a justice of such county, city, &c.; which forfeitures, after deducting the charges of prosecution, shall be applied one third to the informer, ^{Penalty how disposed of.} [†and two thirds to the poor of the parish where such offence shall be committed; excepting the two thirds of the forfeitures incurred by any person within the city of Bath, which two thirds shall be applied to the use of the poor in the hospital, for poor persons resorting to the said city for the benefit of the waters.] And by s. 4. all sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, by any game, lottery, or other device to be determined by chance or lot, shall be void; and all such houses, &c. so exposed to sale, shall be forfeited to such person who shall sue for the same in any court of record, or at the assizes for the county where the offence is committed. ^{s. 4.} By s. 2. the games of the ace of hearts, pharaoh, basset, and hazard,‡ are declared to be games or lotteries within the meaning of the [§10 & 11 W. 3. c. 17. 9 Ann. c. 6. and 8 Geo. 1. c. 2. *ante*]; and all persons who set up or keep the said games, shall be liable to all the penalties by this act inflicted upon persons keeping lotteries, and be prosecuted in like manner. ^{Such sales of houses void, and such houses forfeited.} And by s. 3. every person who shall be an adventurer in any of the said games, lotteries, or sales, or shall play, set at, stake, or punt at the said game of the ace of hearts, &c. shall forfeit [||£50.] to be recovered as aforesaid. ^{s. 2.} By s. 5. any person aggrieved by the determination of any justice or mayor, may appeal to the next general or quarter sessions; but the person appealing shall give reasonable notice to the prosecutor, and enter ^{Certain games within the acts against lotteries.} into ^{s. 3.} ^{Penalty on the adventurers.} ^{“£30.” in 13Geo.2.c.8. Ir} ^{s. 5.} ^{Appeal to sessions.}

† By the 13 Geo. 2. c. 8. Ir. the remaining two thirds are to go to the incorporated society for promoting English protestant schools.

‡ “Or passage,” here added in 13 Geo. 2. c. 8. Ir.

§ The 13 Geo. 2. c. 6. Ir. refers to the 10 W. 3. c. 11. 6 Ann. c. 17. and 11 Ann. c. 5. & 6.

*Costs where
judgment af-
firmed.*

s. 6.

*Convictions not
vacated for want
of form, &c.*

*"Dublin," in
13 Geo. 2. c. 8.
Ir.

s. 7.

*Security to be
given before
certiorari, &c.
issues.*

s. 8.

*Offenders not
able to pay pe-
nalties, to be
imprisoned.*

s. 9.

*Penalty for de-
fault of justices,
&c.*

into recognizance before some justices of peace for the county, &c. where such conviction was had, with 2 sureties, on condition to try such appeal at the next quarter sessions for such county, &c.; and every such appeal shall by the said next quarter sessions be determined; and not afterwards; and in case the judgment be affirmed, the party appealing shall pay unto the prosecutor his treble costs. By s. 6. no such conviction shall be set aside by the quarter sessions for want of form, nor shall such conviction be removeable by *certiorari*, or other process, into any court of record at [*Westminster,] until judgment given thereupon by such sessions. And by s. 7. no writ of *certiorari*, or other process, shall issue to remove the record of any such conviction from the quarter sessions, or any proceedings upon such conviction, into any court of record at [†Westminster,] until the party against whom such conviction is made, before the allowance of such writ of *certiorari*, &c. find 2 sureties to become bound to the prosecutor in £100. with condition to prosecute the same with effect within 6 calendar months, and to pay unto the prosecutor his treble costs, in case such conviction be affirmed. By s. 8. if any person be convicted of setting up or keeping any of the said lotteries or games, or therein adventure, and shall not have sufficient goods whereon to levy the penalties inflicted by this act, or shall not immediately pay or give security for the same, it shall be lawful for the justice before whom such person is convicted, to commit such person to the common gaol of the county, &c. where such offence is committed, for any time not exceeding 6 months. By s. 9. if any justice of peace, or mayor, neglect or refuse to do what is required of him by this act, he shall forfeit £10. for each offence; one moiety to any person who shall sue for the same, and the other [*to the poor of the parish where such offence is committed,] to be recovered with full costs in any court of record, or at the assizes for any county; such prosecution

* "To the incorporated society for promoting English protestant schools"
by the 13 Geo. 2. c. 8. Ir.

cution being commenced within 6 months after such refusal. By s. 10. nothing in this act, or in any former acts against gaming, shall hinder any person from gaming or playing at any of the games in this or in any former act mentioned, [*within any of the palaces where the king shall then reside.] By s. 11. nothing herein shall affect any estate or interest in any lands, &c. which shall hereafter, according to the laws now in being, be allotted to or held by any allotment or partition by lots; but all persons who shall be truly seised as part-owners, joint tenants, and tenants in common, shall be capable to take such estate and interest in like manner as they might have done, by lot, scroll, chance, or allotment, had this act never been made. By s. 12. any suit for any thing done in pursuance of this act, shall be commenced within 3 calendar months after the fact committed, and shall be laid in the county or place where the cause of action arises; and the defendant may plead the general issue, and shall recover treble costs of nonsuit, discontinuance, or judgment upon demurrer. And by the 13 Geo. 2. c. 19. s. 9. Eng. the game of passage, and all other games with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having figures thereon, (back gammon and the other games now played with the back gammon tables, only excepted) shall be deemed games or lotteries by dice, within the meaning of the 12 Geo. 2. c. 28. *supra*; and every person who shall set up or keep any office, table, or place, (save as in the said act declared) for the said prohibited games, shall forfeit the penalties by the said act inflicted upon persons who keep games or lotteries; and every person who shall play, set at, stake, or adventure at the said prohibited games, (save as in the said act is declared) shall forfeit the penalties by the said act inflicted upon persons who play at the games in the said act mentioned; and every such offender shall be prosecuted and convicted, and the penalties

s. 10.

Proviso.

s. 11.

Proviso.

s. 12.

*Limitation of actions.**Pleading.**Costs.*13 Geo. 2. c. 19.
s. 9. Ir.*Game of passage
&c. also to be
deemed unlawful.*

* "Within the Castle of Dublin, or other house in which the chief governor shall then reside," in 13 Geo. 2. c. 8. Ir.

s. 10.

*In suits upon
this act, double
costs recovered.*

6 Ann. c. 17.
Ir.

*Lotteries, &c.
in public houses,
(except at the
Castle of Dub-
lin, &c.) com-
mon nuisances.*

s. 2.

*Penalty for
keeping such
houses, or play-
ing, drawing,
&c. at such lot-
teries, &c.*

*Penalty en-
forced.*

s. 3.

*Limitation for
prosecutions.*

* *Que? "infor-
mation."*

11 Ann. c. 6.
Ir.

nalties sued for and disposed of, in like manner as by said act is directed. By s. 10. if any action, &c. be brought on this act, no essoign, &c. shall be allowed; and over and above the penalties the plaintiff or informer shall recover his double costs. And in Ireland, the 6 Ann. c. 17. Ir. in analogy to the 10 & 11 W. 3. c. 17. *ante* p. 802. enacts, that all lotteries and gaming tables that shall be kept in any public houses in any city or other place, (other than the groom porter's table within the castle of Dublin, or other house in which the chief governor shall reside, during his residence therein) shall be deemed public nuisances; and all grants, patents, and licenses for such lotteries, &c. shall be void. And by s. 2. no person shall publicly keep open, shew, or expose to be played at, or publicly draw, play, or throw at any lottery or game of fortune, either by or with dice, lots, cards, balls, or other numbers or figures; and no person shall publicly keep open, &c. any gaming-table, device, or place, where any person shall play at dice or cards for money or goods, or shall bet or lay any wager on the sides or hands of such who play only for sport; upon pain of forfeiting for every of the afore-said offences, such sum as any 2 justices of peace, or chief magistrate of any city or town corporate, where the offence shall be committed, shall adjudge, upon proof of the matter on the oaths of 2 witnesses; so that such sum doth not exceed 40s.; which justices shall summon the party, and determine such offences, and, by warrant, levy said money by distress and sale of goods; a moiety of said penalty to be to the informer, and the other to the use of the poor of the parish where the offence shall be committed; and if no sufficient distress, the offender shall, by order of said justices, &c. be publicly whipped on some market day, in the open market of said city, town corporate, or next chief town of the county where the offence shall be committed. Provided (s. 3.) that every information be within 10 days after the offence, and the prosecution and warrant for levying such penalties be within one month after such [*warrant] had. And the 11 Ann. c. 6. Ir. has followed the 10 W. 3. c. 17.

c. 17. *ante* p. 802. with such deviations as are noted in the margin: but the 11 Ann. provides, that no person who shall be prosecuted by this act, shall be prosecuted for the same by virtue of any other act. The 13 Geo. 2. c. 8. Ir. has also followed the 12 Geo. 2. c. 28. 13 Geo. 2. c. 8. Ir.

Eng. *supra*, with such deviations as are noted in the margin: and with this further exception, that this Irish statute provides (s. 15.) that no person shall be molested for any of the offences against this act, unless prosecuted within 3 months after the offence. And this statute, as already observed, extends to the game of passage, concerning which the 13 Geo. 2. c. 19. *supra*, provides.

The 27 Geo. 3. c. 1. Eng. enacts (s. 1.) that the 8 Geo. 1. c. 2. and 12 Geo. 2. c. 28. *supra*, so far as they are not by this act altered or repealed, shall be put in execution. But by s. 2. no pecuniary penalty incurred by any person offending against such parts of said acts as

Former statutes confirmed.

27 Geo. 3. c. 1. s. 1. Eng.

s. 2.

concern lotteries, shall be recovered before any justice, but shall be sued for by any person within 6 calendar months after such offence, by action of debt, &c. in any court of record at Westminster; and one moiety of said penalties shall go to the king, and the other, with full costs, to the person who shall sue for the same; and upon every such action, &c. a *capias*, or other writ, shall issue; the first process specifying therein the amount of the penalty sued for, whereof an affidavit shall be first made and filed; and the defendant shall, in such case, be obliged to give bail, as well to answer the suit, as to pay all forfeitures; provided that the bail shall in no case exceed £500. By s. 3. every person

Penalties for offences concerning lotteries, how recovered.

s. 3.

who shall publicly or privately open, set up, continue, or keep, by himself or by any other person, any office, for buying, selling, or otherwise dealing in any tickets, or shares of tickets, in any lottery established by any British or Irish act, or for registering tickets without a license; and every person, (except as herein after), who shall by himself, or by any other person, or for his account, or on the account, or as the servant, agent, or factor, of any other person, sell, (or cause, &c.) the chance of any ticket, or any share thereof, for a day, or part of a day, or any less time than the whole time of drawing

Persons dealing in lottery tickets without license, or selling chances for a less time than the whole time of drawing, or insuring, &c. deemed vagabonds, &c.

Justices to commit such offenders to the house of correction till quarter-sessions.

s. 4.

The provisions of the 17 Geo. 2. c. 5. extended to this act.

s. 5.

Proviso as to the possessors of whole tickets insuring.

drawing then to come; or insure (or cause, &c.) for or against the drawing of any such ticket; or shall receive any money or goods in consideration of any agreement or promise to repay any sum of money, or to deliver the same, or any plate, jewels, or other goods, if any such ticket shall prove fortunate or unfortunate, or upon any other chance, event, or contingency, relative to the drawing of such ticket, whether as to the time of their being drawn, or otherwise, shall be deemed rogues and vagabonds, within the 17 Geo. 2. c. 5. and shall be punishable as such; and all persons found offending may be apprehended and conveyed before some justice as in said act is directed; and the justice before whom such offender shall be brought, such offender not having been sued for the same offence, without covin or collusion, in some court of record, shall, upon proof of the offence in manner by said act directed, order such offender to be sent to the house of correction, until the next general or quarter-sessions, and the justices at such sessions shall examine the case, and proceed according to the directions of said act; and all justices, mayors, bailiffs, and other civil officers, shall use their utmost endeavours to prevent the committing any of the offences aforesaid, by all lawful ways, and shall be indemnified.

By s. 4. all other powers, and provisions, for apprehending, securing and punishing rogues and vagabonds, not hereby altered, shall be carried into execution in relation to the persons hereby declared to be rogues and vagabonds. [*By s. 5. it shall be lawful for any person actually possessed of any whole undrawn ticket, to make any insurance on his ticket for indemnifying himself against any loss which he may sustain by such ticket, so as every contract for such insurance be reduced into writing (without stamps) before the time of such ticket being drawn; and so as the name of the possessor, the number, the lottery, and the amount of the premium received thereon, be inserted in such agreement, and so as every insurance be made upon a whole

* The annual lottery act has (of late) prohibited all such insurances.

whole ticket, on condition to pay the full value thereof, and not otherwise. But by s. 6. no such insurance shall be for a less time than shall remain of the drawing of the lottery; and every ticket insured shall be deposited, by the person insuring the same, with the receiver general, or some person appointed by him to receive the same; but such ticket may be assignable, together with such insurance. By s. 7. if any person, not duly licensed, shall grant, sign, or underwrite any agreement for any such insurance, or shall take any premium or consideration for such insurance, such person shall be subject to the like pains as persons keeping lottery offices without license.] By s. 8. no person shall be prosecuted by both the ways by this act prescribed; nor shall any person against whom any suit hath been carried on with effect, be liable to imprisonment as a rogue and vagabond for the same offence; and where any person shall be convicted and sentenced to imprisonment as a rogue and vagabond, such person shall not be liable afterwards to be prosecuted for any penalty for the same offence. By s. 10. all penalties and sums of money which shall belong to the king, and shall be received by any officer in execution of this act, shall be paid to the receiver general of the stamp office, who shall keep a separate account thereof, and there-out shall pay the expense the office shall be put to in executing this act; and the said receiver general shall pay the residue into the receipt of the exchequer, as other penalties are payable. By s. 11. persons sued for any thing done in pursuance of this act may plead the general issue, and shall have treble costs of verdict or nonsuit. It is a provision of the last annual lottery act, 48 Geo. 3. c. 139. U. K. that on complaint, upon oath, before a justice of peace of any offence committed against this act, in any house or place within the jurisdiction of such justice, whereby any offenders may be liable to be punished as rogues and vagabonds,* such justice, by warrant, may empower any person by day or

s. 6.

Insurances how to be.

s. 7.

Penalties for persons not duly licensed making insurances.

s. 8.

Persons not liable to prosecutions for penalties, and also as vagabonds.

s. 10.

His majesty's share of penalty to whom paid.

s. 11.

*Pleading.**Costs.**48 Geo. 3. c. 139. s. 52. U. K.**Justices may authorize the breaking of doors to apprehend certain offenders against this act.*

* This refers to s. 35. which prohibits insuring lottery tickets, and to s. 45. which relates to selling shares or chances on unstamped paper.

Penalty for resisting officer in the execution of such duty.

s. 56.

Persons adjudged rogues and vagabonds, how dealt with.

33 Geo. 3. c. 18.
s. 18.

or by night, (but if in the night, in the presence of a constable) to break open the doors of any part of such house or place where such offence shall have been committed, and to enter and seize such offenders, or other persons, who shall have knowingly assisted or been any ways concerned in committing such offence, and convey them before any justice of the county, &c. wherein such persons shall be so apprehended, to be dealt with according to law; and all persons who shall be discovered in such house or place, knowingly aiding, assisting, or any ways concerned with such offenders in carrying on any such transactions, shall be deemed rogues and vagabonds, and punished accordingly; and the officer having the execution of such warrant, or person acting in his aid or assistance, may arrest any persons so discovered in such house or place, and convey them before a justice as aforesaid. And if any person shall forcibly obstruct or hinder any such officer, or others acting in his aid or assistance, in the execution of their duty herein, he shall be deemed an offender against law, and the court before whom he shall be tried and convicted may order him to be fined, imprisoned, and publicly whipped, as in their discretion shall be thought fit. And all persons, although not discovered in such house or place as aforesaid, who shall employ any person in carrying on any of the transactions aforesaid, or be aiding or assisting therein, shall be deemed rogues and vagabonds, and punished accordingly. And by s. 56. if any person shall be brought before any 2 justices, and shall be convicted of any offence against this act, whereby he shall be adjudged a rogue and vagabond, such justices may order him to be sent to the house of correction, for any time not exceeding 6 nor less than 1 calendar month, and until the final period of the drawing of the lottery in respect whereof such offence shall be committed; and such proceeding shall not be subject to appeal, nor removeable by *certiorari*. The 33 Geo. 3. c. 18. Ir. enacts (s. 18.) that if any person shall set up, or shall by writing or printing publish the setting up of any unlawful lottery

tery, or any lottery, except a lottery established by law in this kingdom, or in Great Britain, or shall enter into or publish any undertaking tending to form any scheme resembling a lottery, or in the nature of a lottery, under any denomination, on the foot of any Irish or British state lottery, or other lottery, or referring thereto, or depending thereon, or shall sell, procure, or deliver any ticket, receipt, chance, or number, in any other lottery, except an Irish or British state lottery, or belonging to any part of any lottery, save as aforesaid, or belonging to any scheme in the nature of a lottery; or shall procure or deliver any ticket, &c. in or belonging to any duplicate, or pretended duplicate, or resemblance of any lottery, or any scheme in the nature of a lottery; or shall receive any money or other consideration for any such unlawful ticket, &c. or in consideration of any money or other reward to be repaid in case any ticket, &c. in any such scheme shall prove fortunate; and if any person shall make, print, or publish (or cause, &c.) any proposal or scheme for advancing small sums of money by several persons, to be divided amongst them by chances of the prizes in any lottery established by act of parliament (of this kingdom or Great Britain,) or shall deliver out tickets to the persons advancing such sums, to entitle them to a share of the money so advanced, or any other advantage according to such proposal; or shall make, &c. (or cause, &c.) any scheme of the like nature, he shall, over and above any penalties inflicted by any former act made against any private or unlawful lotteries, forfeit £200. And by s. 19. if any person shall keep any office, or shall print or publish any scheme for receiving any money in consideration of any interest to be granted for the same in any ticket in any lottery, whereof such person shall not then be possessed in his own right; or in consideration of any money to be repaid, in case any ticket, which shall not then be in his possession, in his own right, shall prove fortunate; or shall sell or take subscriptions for the sale of any chance, lot, or part of any chance, &c. of any one or more of the tickets of any lottery, or of

Penalty for setting up, or publishing any lottery, or resemblance of a lottery, except such as established by law in Great Britain or Ireland, or other offences of like nature.

s. 19.

Penalty on keeping any office, &c. for receiving money in respect of tickets or shares of which such person shall not be in possession.

or

- or on the number of any lottery ticket, without having such original ticket in his possession and right; or shall sell any greater number of shares of any ticket than the constituent parts thereof; such person shall forfeit £100. one moiety to the king, and the other to the informer. And by s. 20. no person shall sell any ticket, or any share of any ticket, in any Irish or British lottery, for a day or part of a day, or for any time less than the whole time of drawing such lottery then to come, or shall publish any proposal for such purpose, upon pain of forfeiting £100. By s. 21. every person who shall be an adventurer in, or shall pay any money or other consideration, or contribute upon account of any such sales, lotteries, proposals or schemes, as in the 13 Geo. 2. c. 8. Ir. are subjected to penalties, shall forfeit double the sum paid, &c. By s. 22. no person shall insure for or against the drawing of any ticket in any Irish or British lottery, or receive any money or goods in consideration of any agreement to repay any sum, or to deliver the same or other goods, if any such ticket shall prove fortunate or unfortunate, or on any other chance or event relative to the drawing of any such ticket; or, under any pretence, promise or agree to pay any money, or deliver any goods, or to do or forbear doing any thing for the benefit of any person, whether with or without consideration, on any event relative to the drawing of any such ticket, or publish any proposal for any of the purposes aforesaid; upon pain of forfeiting [*£100.] By s. 23. all penalties not exceeding £100. which shall be incurred for any offence against this act, or any act now of force for preventing unlawful lotteries, and which are not herein otherwise directed to be recovered, may be recovered before any justice of peace for the county, &c. in which the offence shall be committed, upon proof of the offence by the oath of a witness, or by confession, or on the view; and one moiety shall belong to the informer (who shall be deemed a competent witness,) and the other to the king; and in case of non-payment

s. 20.

Penalty for selling, &c. any ticket, &c. for less time than of the drawing.

s. 21.

Persons contributing to lotteries, &c. prohibited by 13 Geo. 2. c. 8. or this act, forfeit double.

s. 22.

Penalty for insuring lottery tickets.

s. 23.

Penalties by this or other act, not exceeding £100. how recovered and enforced.

* The penalty by the annual lottery act is £50. and the contract void.

payment, the offender shall be sent by such justices to the house of correction, to be kept to hard labour for any time not exceeding 6 months, nor less than 3 months, as such justices shall think proper, unless such penalty shall be sooner paid: provided that any person convicted of any offence against this act, may appeal to the next general sessions of the peace. And by s. 26. all penalties herein imposed exceeding £100. shall be recovered by action of debt, &c. in any court of record at Dublin.

s. 26.

Penalties herein, exceeding £100. how recovered.

The 42 Geo. 3. c. 119. G. B. further enacts, that all games or lotteries called "little goes," shall be deemed public nuisances. And by s. 2. no person shall keep any office or place for any game or lottery called a "little goe," or any other lottery not authorized by parliament, to be played, drawn, or thrown at or in, by dice, or any other way; or shall knowingly suffer such to be kept for any such game or lottery to be played, drawn, or thrown at, in his house, room, or place, upon pain of forfeiting £500. to be recovered in the exchequer, at the suit of the attorney general, to the use of the king; and such offender shall be deemed a rogue and vagabond within the meaning of the 17 Geo. 2. c. 5. and be punishable as such. Provided (s. 3.) that every such offender, against whom no information shall have been made as aforesaid, shall be punishable as a rogue and vagabond according to the 17 Geo. 2. c. 5. 27 Geo. 3. c. 1. or this act. And by s. 4. upon information on oath before any justice of peace of any offence committed against this act, at any place within his jurisdiction, whereby the offender may be punishable as a rogue and vagabond, such justice may, (if he judge it reasonable) by special warrant, authorize any person, by day or night, (but if in the night-time, in the presence of a peace officer) to break open the doors, or any part of such house or place, and enter therein, and seize all offenders and others persons discovered therein, who shall have knowingly assisted or been concerned with such offenders, and convey them before a justice of peace of the county, &c. wherein such person shall be apprehended,

Games called "little goes" public nuisances.

42 Geo. 3. c. 119. s. 1. G. B.

s. 2.

Penalty for keeping offices, &c. for lotteries not authorized by act of parliament.

s. 3.

Proviso.

s. 4.

Powers of justices for apprehending such offenders.

*Punishment of
those obstructing
officers, &c.*

s. 5.

*Penalty for
making agree-
ments, or pub-
lishing proposals
relative to such
lotteries.*

s. 6.

*Any persons
may apprehend
offenders on the
spot.*

*Penalties how
enforced.*

s. 7.

*The provisions
of 27 Geo. 3. c. 1.
extended to this
act.*

s. 8.

Pleading.

Costs.

hended, to be dealt with according to law, as aforesaid; and all persons so discovered assisting, &c. shall be punishable as rogues and vagabonds are by the 17 Geo. 2. c. 5; and any person who shall forcibly obstruct, &c. any officer, or person acting in his aid, in the execution of said duty, shall be fined, imprisoned, and publicly whipped, as the court before whom he shall be tried shall think fit: And all persons, although not discovered in such house, &c. who shall employ (or cause, &c.) any person in carrying on any of the transactions aforesaid, or in aiding any such person, shall be punishable as rogues and vagabonds are by the 27 Geo. 3. c. 1. By s. 5. no person shall, under any pretence, agree to pay any sum, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person, whether with or without consideration, on any contingency relative to the drawing of any ticket, lot, number or figure, in any such game or lottery, or to publish any proposal for any of the purposes aforesaid; on pain of £100. By s. 6. it shall be lawful for any person to apprehend, on the spot, any person so offending, and to convey him before any magistrate or justice of peace residing near the place, to be proceeded against under this act; and it shall be lawful for such magistrate, &c. upon proof, on oath or information, of any such offence, to give judgment accordingly; And where the party shall be convicted, and such penalty shall not be immediately paid, to commit such offender to prison for any time not exceeding 6 calendar months, nor less than one, or until such penalty shall be satisfied; such penalty to go one third to the king, one third to the informer, and the other third to the person apprehending such offender. By s. 7. the provisions of the 27 Geo. 3. c. 1. shall extend to all cases within this act, for which no different provision hereby is made. By s. 8. any person sued for any thing done in pursuance of this act, may plead the general issue, and shall have treble costs of verdict, nonsuit, discontinuance, or judgment.

The law of Ireland contains no provisions in respect to lotteries, corresponding to those of the 27 Geo. 3.

c. 1.

c. 1. Eng. or 42 Geo. 3. c. 119. Eng. *ante* p. 809.—
815.

With respect to foreign lotteries; the 9 Geo. 1. c. 19. *Penalty for keeping, &c. foreign lotteries.*
s. 4. Eng. provides, that if any person shall, by colour of any grant from any foreign prince or state, set up or keep any lottery, or undertaking in the nature of a lottery, under any denomination; or shall make, print, or publish, (or cause, &c.) any proposal for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery; and be convicted thereof, on oath of a witness, by 2 justices of the county, &c. where such offence shall be committed, or the offender found, he shall, over and above any penalties by any former act against unlawful lotteries, forfeit £200. one third to the king, one third to the informer, and one third to the poor of the parish where the offence shall be committed; to be levied by distress, &c. and shall also by the justices be committed to the county gaol for a year, and from thence till the said sum of £200. be paid. Provided (s. 5.) that persons aggrieved may appeal to the next quarter sessions for the county, &c. where such judgment shall be given. And by the 6 Geo. 2. c. 35. *Appeal to sessions.*
s. 29. Eng. if any person shall sell, procure, or deliver, any ticket, receipt, chance, or number, in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery, or in any duplicate or pretended duplicate of any foreign, &c. lottery; or shall receive any money for any such ticket, &c. or in consideration of any money to be paid in case any ticket or number in any foreign, &c. lottery, or any class, or division thereof, shall prove fortunate; and shall be convicted in any court of record at Westminster, or, on the oath or affirmation of a witness, before 2 justices where the offence shall be committed, or the offender found; he shall forfeit £200. one third to the king, one third to the informer, and one third to the poor of the parish where the offence shall be committed; the same (in case of conviction before 2 justices) to be levied by distress and sale of goods, by warrant of such justices; and shall also by the court or
Penalty how applied.
Further punishment.

s. 30.

Appeal to sessions,

justices be committed to the county gaol for a year, and from thence till the £200. be paid. Provided (s. 30.) that any person aggrieved may appeal to the next quarter sessions for the county, &c. where such judgment shall be given. To these statutes there are none corresponding in Ireland: but it is to be observed that the 13 Geo. 2. c. 8. Ir. which has been already compared with the 12 Geo. 2. c. 28. Eng. extends to foreign lotteries.

Horses to be entered for races by the owners, and one at a time.

13 Geo. 2. c. 19. s. 1. Eng.

Penalty.

s. 2.

No plate to be run for under £50. value.

s. 4.

Race to be ended in one day.

s. 5.

At what courses races to be run.

s. 6.

Penalties how sued for and applied.

To this head of gaming is to be referred the 13 Geo. 2. c. 19. Eng. which enacts, that no person shall enter, start, or run any horse, mare, or gelding, for any plate, prize, money, or other thing, unless such horse, &c. be, *bona fide*, his property; nor shall any one person enter and start more than one horse for the same plate, &c.; and if any person enter, &c. any horse, &c. not being his property, the said horse, &c. or the value thereof, shall be forfeited; and if any person shall enter and start more than one horse, &c. for the same plate, &c. such horse, &c. (other than the first entered horse, &c.) or the value thereof, shall be forfeited. And by s. 2. no plate, &c. shall be run for by any horse, &c. or advertised or proclaimed to be run for, unless such plate, &c. be of the real value of £50. or upwards; and if any person shall enter, &c. any horse, &c. for any plate, &c. of less value, or shall make, print, advertise, or publish any advertisement or notice of any such plate, &c. of less value than £50. to be run for by any horse, &c. every person so entering, &c. such horse, &c. shall forfeit £200; and every person who shall make, &c. such advertisement, &c. shall forfeit £100. By s. 4. every race that shall be run for any plate, &c. shall be begun and ended in the same day. And by s. 5. no person shall start or run any match with any horse, &c. for any plate, &c. unless at Newmarket-Heath in the counties of Cambridge and Suffolk, or Black Hambleton in the county of York, or the said plate, &c. be of the value of £50. or upwards; upon pain of forfeiting £200. By s. 6. all penalties for any offence against this act shall be sued for by any action, &c. in any court of record at Westminster, or at the assizes, and shall be disposed of, one moiety to the use

use of such person as shall sue, and the other to the use of the poor of the parish, &c. where the offence is committed; except such moiety be recovered of any person within the county of Somerset, which moiety shall go to the use of the hospital in the city of Bath. By s. 7. all money paid for entering any horse, &c. shall be paid to the second best horse, &c. which shall start or run. By s. 8. nothing herein shall prevent the starting or running of any horse, &c. for any plate, &c. now issuing out of the rents and profits of any lands, &c. or the interest of any money now chargeable with the same, or appropriated for that purpose. The 13 Geo. 2. c. 8. Ir. also enacts, that any person who shall run, (or cause, &c.) any horse, mare, or gelding, for any wager, sum of money, prize, plate, or other goods or chattels, of less value than £20. shall forfeit such horse, &c. and £20.; and every person who shall knowingly or wilfully be present at such race or horse course, shall forfeit 5s.; all which forfeitures shall be recovered before any justice of peace, or chief magistrate, within their jurisdictions, who, upon confession, or proof on oath of a witness, may determine the same, and, by warrant directed to a constable, seize such horse, &c. and levy such sum by distress and sale of the offender's goods; and if, in 6 days after issuing such warrant, such horse, &c. cannot be seized, then such justice, &c. shall, upon examination of a witness, ascertain the value thereof, and levy it by distress, &c. and if such penalties are not paid, or the offender hath not sufficient goods, then he shall be put in the stocks for 3 hours; and all constables are required to seize such horses, &c. so soon as may be after such races, and carry them before the next justice, &c. that the offenders may be proceeded against as aforesaid: Provided that where such penalty exceeds £10. the party may appeal to the next going judge of assize, who may summarily determine the same. By s. 13. all sums of money so levied, and the money arising by the sale of such horse, &c. shall be paid one third to the poor of the parish where such races were, one third to the incorporated society for promoting English protestant schools, and a third

s. 7.

Entrance money to be paid to second horse.

s. 8.

Proviso.

13 Geo. 2. c. 8. s. 12. Ir.

*Penalty for running horses for plates, &c. under £20. value.**How enforced.**Appeal in what case, and how.*

s. 13.

Forfeitures, how applied.

s. 14. third to the informer. Provided (s. 14.) that it shall be lawful for the corporation of horse-breeders in the county of Down, to continue their races according to their charter.* The clauses (s. 15 & 16.) of this act, *ante* p. 807—8. which respect the limitation for prosecutions, and also the limitation, pleading, and costs, in actions brought for any thing done in pursuance of this act, are to be here also referred to.

Proviso.

All undertakings of the nature of the South Sea project public nuisances.

6 Geo. 1. c. 18. s. 19. Eng.

Offenders punishable as for a præmunire.

The 6 Geo. 1. c. 18. s. 19. Eng. is to be here stated, which clause enacts, that all such unlawful undertakings and attempts, (as the South Sea project,) tending to the common grievance, prejudice, and inconvenience of his majesty's subjects, or a great number of them, in their trade, commerce, or other lawful affairs, and the making or taking any subscriptions for that purpose, the receiving or paying of any money upon such subscriptions, the making or accepting of any assignment or transfer, or pretended assignment or transfer, of any share upon such subscription, and every other matter for furthering, countenancing, or proceeding in any such unlawful undertaking, &c. and particularly the pretending to act as a corporate body, or to raise a transferrable stock, or to make transfers or assignments of any shares therein, without legal authority, and the making or endeavouring to make use of any charter formerly granted, for any purpose not thereby intended, and the acting or pretending to act under any obsolete charter, shall be deemed public nuisances; and all such offenders, being convicted upon information or indictment in any court of record at Westminster, or in Edinburgh, or Dublin, shall be liable to such fines,, penalties, and punishments, whereunto persons convicted for public nuisances are, and moreover shall incur the pains and penalties of the statute of provision and *præmunire*, 16 Ric. 2. c. 5.

§ 11.

Penalty for persons, not having certain qualifications, killing game.

13 Ric. 2. st. 1. c. 13. E. & I.

XI. Next as to offences against the laws made for preserving game. The 13 Ric. 2. st. 1. c. 13. E. & I. is the first statute respecting the qualification for killing game; by which it is enacted, that no artificer, labourer, nor other layman, which hath not lands or tenements of 40s. a year

* The 31 Geo. 3. c. 43. Ir. restrains horse races within 9 miles of Dublin Castle.

40s. a year, nor priest, nor clerk, if he be not advanced to the value of £10. by the year, shall keep any greyhound, hound, or other dog, to hunt; nor shall use ferrets, hays, nets, hare-pipes, cords, or other engines, to take or destroy hares or conies, or other gentlemens' game, upon pain of a year's imprisonment; and the justices of peace shall inquire of offenders in this behalf, and punish them by the pain aforesaid. And by the 1 Jac. 1. c. 27. s. 3. Eng. every person which shall have any greyhound for coursing of deer or hare, or setting dog or net to take pheasants or partridges, (except he be seised in his own or his wife's right, of lands, &c. of the clear yearly value of £10. of some estate of inheritance, or for term of life of the clear yearly value of £30. or be possessed of goods or chattels to the value of £200. or be the son of a knight or of a baron of parliament, or the son and heir apparent of an esquire,) and be thereof convicted as in s. 2. (*viz.* by confession, or oath of 2 witnesses, before 2 justices of peace of the county, &c. wherein the offence shall be committed, or the party apprehended,) shall by the said justices be committed and imprisoned as in s. 2. *post*, (*viz.* to the common gaol for 3 months,) except he pay to the church-wardens of the parish where the offence shall be committed, or the party apprehended, to the use of the poor, 40s. And by the 3 Jac. 1. c. 13. s. 5. Eng. if any person not having lands, &c. of the clear yearly value of £40. or not worth in goods and chattels £200. shall use any gun or bow to kill any deer or conies; or shall keep any buckstalls, or engine, hays, gate-nets, purse-nets, ferrets, or coney-dogs, except such as shall have ground enclosed, used for the keeping of conies, the increasing of which shall amount to the clear yearly value of 40s. or keepers or warreners in their grounds; any person having lands, &c. of the clear yearly value of £100. in fee, or for life, in his own right, or in the right of his wife, may take from such person, to his own use, such guns, &c. And by the 7 Jac. 1. c. 11. s. 7. Eng. it shall be lawful for persons which have free warren, and for every lord of a manor, and for every freeholder seised in his own or his wife's right of lands, &c.

1 Jac. 1. c. 27.
s. 3. Eng.

*Qualification for
keeping grey-
hounds to course
deer or hares, or
setting dogs or
nets to take
pheasants or
partridges.*

3 Jac. 1. c. 13.
s. 5. Eng.

*Farther quali-
fication for kil-
ling deer and
conies.*

7 Jac. 1. c. 11.
s. 7. Eng.

*Further quali-
fication for taking
pheasants and
partridges.*

to

to the clear yearly value of £40. of some estate of inheritance, or for term of life of the yearly value of £80. above reprises, &c. or worth in goods or chattels £400. by themselves, or their household servants authorized for that purpose, to take pheasants and partridges in the day time only, in their own or their masters' free warren, between the feast of St. Michael and the birth of our Lord, yearly. But with respect to the qualification for

22 & 23 Car. 2.
c. 25. s. 3. Eng.

General qualification for killing game.

s. 2.

Who may seize or search for dogs or engines of unqualified persons.

4 & 5 W. & M.
c. 23. s. 3. Eng.

Penalty for keeping or using dogs or engines.
• Repealed by
16 Geo. 3. c. 30.
Eng.

Eng. enacts, that every person not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of £100. or for term of life, or lease or leases of 99 years, or for any longer term, of the clear yearly value of £150. (other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the said forests, &c.) shall not be allowed to have guns, bows, grey-hounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, lowbels, hare-pipes, gins, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game. And by s. 2. lords of manors or other royalties, not under the degree of an esquire, may, by writing under their hands and seals, authorize game-keepers within their royalties, who may seize all such guns, &c. as within such manors shall be used by any persons by this act prohibited to keep or use the same; and the said game-keepers, or any other persons thereunto authorized by warrant of any justice of peace of the same county, &c. may, in the day time, search the houses or other places of any such persons, as upon good ground shall be suspected to have in their custody any guns, &c. and seize the same for the use of the lord of the manor, or, otherwise, to destroy them. And by the 4 & 5 W. & M. c. 23. s. 3. Eng. every constable, head-borough, and tithingman, being authorized by a justice of peace, shall enter into and search (in such manner and with such power as provided by the *3 W. & M. c. 10. in case of venison, &c.) the houses or other places of suspected persons not qualified

qualified; and if any hare, partridge, pheasant, pigeon, [fish,] fowl, or other game, shall be found, the offender shall be carried before a justice of peace of the same county, &c.; and if such person do not give a good account how he came by such game, or shall not, in convenient time to be set by the justice, produce the party of whom he bought the same, or some credible person to depose upon oath such sale thereof, he shall be convicted by said justice, and shall forfeit for every hare, &c. any sum not under 5*s.* and not exceeding 20*s.*; one moiety to the informer, and the other to the poor *Proceeding to enforce penalty.* of the parish where the offence was committed, to be levied by distress, &c.; and for want of distress he shall be committed to the house of correction for any time not exceeding a month, and not less than 10 days, there to be whipped, and kept to hard labour. And in case any person not qualified shall keep or use any bows, grey-hounds, setting-dogs, ferrets, coney-dogs, hays, lurchers, nets, tunnels, lowbels, hare-pipes, snares, or other instruments for destruction of [fish,] fowl, or other game, and shall be thereof convicted as aforesaid, he shall be subject to the same penalties as are to be inflicted upon the persons who shall be found to have any hare, &c. as aforesaid. And if any person produced shall not, before the justice, give evidence of his innocence as aforesaid, he shall be convicted in the same manner as the person first charged, and so from person to person, until the first offender be discovered. And by s. 4. all lords of manors or other royalties, or any persons authorized by them as game-keepers, may within their manors, &c. resist such offender in the night-time, *Offences in the night time, how restrained.* as if such fact had been committed within any ancient chase, park, or warren. And by s. 10. if any inferior tradesman, apprentice, or other dissolute person, shall hunt, hawk, [fish,] or fowl, (unless in company with the master of such apprentice duly qualified,) he shall be *Inferior tradesmen, &c. liable to penalties, &c.* subject to the penalties of this act, and may be sued for his wilful trespass in coming on any person's land, and if found guilty the plaintiff shall recover full costs. By s. 7. *s. 7.* no *certiorari* shall be allowed to remove any conviction or proceeding under this act, unless the party, against *Certiorari upon what terms granted,* whom

whom such conviction shall be made, shall, before the allowance of such *certiorari*, become bound to the person prosecuting, in £50. with such sureties as the justice of peace before whom such offender was convicted shall think fit, with condition to pay unto the prosecutors (within one month after such conviction confirmed, or *procedendo* granted) their costs, to be ascertained upon their oaths; and in default thereof, it shall be lawful to proceed to the execution of such conviction. By s. 8. where any offender shall be punished by this act, he shall not incur the penalty of any other law for the same offence. And by s. 9. if any suit shall be brought for any thing done in pursuance of this act, it shall be lawful for the person sued to plead the general issue, and such defendant shall have treble costs of verdict, nonsuit, or discontinuance. But the 5 Ann. c. 14. s. 4. Eng. further enacts, that if any person, not qualified, shall keep or use any grey-hounds, setting-dogs, hays, lurchers, tunnels, or other engine, to kill and destroy the game, and shall be convicted upon the oath of a witness, by the justice of peace where the offence is committed, he shall forfeit £5. one half to the informer, and the other to the poor of the parish where the offence was committed; to be levied by distress, &c.; and for want of distress, the offender shall be sent to the house of correction, for 3 months for the 1st offence, and for every other offence, 4 months. And it shall be lawful for any justice of peace, in his county, &c. and for any lord within his manor, to take away any hare, pheasant, partridge, moor, heath-game or grouse, or other game, from any higler, chapman, inn-keeper, victualler, or carrier, or other person not qualified to kill the same; and likewise to take away such dogs, nets, or other engines, which shall be in the custody of any person not qualified to keep the same, to their own use. And by s. 2. if any higler, chapman, carrier, inn-keeper, victualler, or alehouse-keeper, shall have in his possession any hare, pheasant, partridge, moor, heath-game or grouse, or shall buy, sell, or offer to sell any hare, &c. every such higler, &c. (unless such game in the hands of

s. 8.

Proviso.

s. 9.

Pleading.

Costs.

5 Ann. c. 14.
s. 4. Eng.Penalty for
keeping dogs
and engines to
kill game.Who may seize
them.

s. 2.

Penalty for hig-
lers, &c. having
hares, &c. in
their possession.
&c.

of such carrier be sent up by a person qualified) shall be carried before a justice of peace for the county, &c. where the offence shall be committed, and, upon view, or upon the oath of a witness, shall be convicted, and shall forfeit for every hare, &c. £5. one half to the informer, and the other half to the poor of the parish; to be levied by distress, &c. and for want of distress the offender shall be committed to the house of correction, for 3 months for the 1st offence, and for every other offence, 4 months: provided such conviction be within 3 months after such offence. And before the allowance of any *certiorari* to remove any conviction or other proceeding under this act, the party convicted shall become bound to the prosecutor in £50. with such sureties as the justice of peace before whom he shall be convicted shall think fit, with condition to pay unto the prosecutors, within 14 days after such conviction confirmed, or *procedendo* granted, their full costs, to be ascertained upon their oaths; and in default thereof it shall be lawful to proceed for the execution of such conviction, as if no *certiorari* had been awarded. By s. 3. any person that shall destroy, sell, or buy any hare, pheasant, partridge, moor, heath-game, or grouse, and shall within 3 months make discovery of any higler, &c. that hath bought or sold, or offered to buy or sell, or had in his possession any hare, &c. so as any one shall be convicted; such discoverer shall be discharged of the pains and penalties hereby enacted for killing or selling such game, and shall receive the same benefit as any other informer. But the 28 Geo. 2. c. 12. Eng. (after reciting that doubts had arisen in respect to the meaning of the word "chapman" in the 5 Ann. c. 14. *supra*.) further provides, that if any person, qualified or not qualified to kill game, sell any hare, pheasant, partridge, moor, heath-game, or grouse, he shall be liable to the same penalties as are inflicted by the 5 Ann. c. 14. *supra*, upon higliers, chapmen, &c. for buying, selling, or offering of game for sale. And by s. 2. if any hare, &c. be found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry-cook, it shall be deemed to be an exposing to sale, within the meaning of this act,

Certiorari upon what terms granted.

s. 3.

Encouragement to offenders to make discovery.

28 Geo. 2. c. 12.
s. 1. Eng.

Persons selling or exposing to sale game, liable to penalties.

s. 2.

What deemed an exposing to sale.

and

and of the 5 Ann. c. 14. And the forfeitures shall be recovered, and penalties inflicted, and applied to such uses as are prescribed by the 5 Ann. or any other act since made for the preservation of game. It is here to be observed that a further qualification for killing game

48 Geo. 3. c. 55. is required by the 48 Geo. 3. c. 55. G. B. by which cer-
G. B. tain duties are imposed upon game certificates, in lieu

Game certificates of those imposed by former acts.

Who may ap-
point a game-
keeper.

22 & 23 Car. 2.
c. 25. s. 2. Eng.

5 Ann. c. 14.
s. 4. Eng.

Penalty on
game-keeper
selling game
without consent.

9 Ann. c. 25.
s. 1. Eng.

One game-keep-
er in one manor,
and to be enter-
ed with clerk of
the peace.

48 Geo. 3. c. 93
s. 2. E.

The clause of the 22 & 23 Car. 2. c. 25. Eng. which enables the lords of manors and other royalties, to appoint game-keepers, has been already stated, (*ante* p. 822.) And by the 5 Ann. c. 14. s. 4. Eng. it shall be lawful for any lord, by writing under hand and seal, to empower his game-keeper, upon his lordship or manor, to kill hare, pheasant, partridge, or other game; but if the same game-keeper shall, under colour of said authority, kill or take the same for the use of such lord, and afterwards sell and dispose thereof without the consent of the lord, and be convicted upon the complaint of such lord, and upon the oath of a witness, before a justice of peace where such offence is committed, he shall be committed to the house of correction for 3 months, and there kept to hard labour. And by the 9 Ann. c. 25. s. 1. Eng. no lord of a manor shall appoint above one person to be game-keeper, within any manor, with power to kill game: And the name of the person authorized shall be entered with the clerk of the peace of the county, &c. where the manor lies; the entry to be made and viewed without fee, and a certificate thereof to be granted by the clerk of the peace, upon payment of 1s.: And if any other game-keeper, whose name is not so entered, who shall not be otherwise qualified by law to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath-game, or grouse, he shall incur such penalties as are inflicted by the 5 Ann. c. 14. *ante* p. 824. upon higlers, &c. for buying or selling of game; such forfeitures to be recovered in such manner, within such time, and to such uses, as are prescribed by said act. And the 48 Geo. 3. c. 93. E. (which repeals certain clauses of the 1 Jac. 1. c. 27. and 3 Geo. 1. c. 11.) further

further provides (s. 2.) that it shall be lawful for any lord of a manor to appoint any person, (whether acting as a game-keeper to any other person or not, or whether retained and paid for as the male servant of any other person, or not,) to be a game-keeper to such manor, with authority to such person to kill game within the same for his own use, or for the use of any other person to be specified in such deputation, whether qualified or not; and no person so appointed game-keeper, and not killing game for the use of the lord of the manor for which such deputation shall be given, shall be deemed to be, or entered or paid for as the game-keeper or male servant of the lord making such appointment or deputation. And by s. 3. any person appointed game-keeper under this act to kill game for his own use, or the use of any other person, shall have the same privileges and authority, as if he had been legally qualified and appointed to act as game-keeper to kill game for the use of the lord of such manor.

Next as to the laws for preserving the four-footed game in particular. By the 3 Edw. 1. c. 20. E. & I. if any trespasser in parks [or ponds,] be attainted at the suit of the party, great amends shall be awarded according to the trespass; and he shall have 3 years imprisonment, and shall make fine at the king's pleasure, (if he have whereof,) and then shall find good surety that after he shall not commit like trespass; and if he have not whereof to make fine, after 3 years imprisonment, he shall find like surety; and if he cannot find like surety, he shall abjure the realm. And if any being guilty thereof be fugitive, and have no land or tenement sufficient whereby he may be justified, so soon as the king shall find it by inquest, he shall be proclaimed from county to county, and outlawed. If none sue within a year and a day after the trespass, the king shall have the suit. And such as be found guilty by inquest, shall be punished in like manner. And if such trespasser be attainted, that he hath taken tame beasts, or other thing, in the parks, by robbery, let the common law be executed. And by the 21 Edw. 1. st. 2. E. & I. if

Lords of manors may appoint game-keepers whether qualified or not.

Penalty for trespassing in parks.

3 Edw. 1. c. 20. E. & I.

21 Edw. 1. st. 2.

any s. 1. E. & I.

Powers given to foresters, &c. to apprehend trespassers.

s. 2.

Proviso.

1 Hen. 7. c. 7. E. & I.

Penalties for hunting in the night, or disguised.

any forester, parker, or warrener, find any trespasser wandering within his liberty, intending to do damage therein, and after hue and cry made to stand unto the peace, he will not yield himself, but doth continue his malice, and disobeying the king's peace do flee, or defend himself with force and arms, although such forester, &c. or any other, in the king's peace, aiding such forester, shall kill such offender in arresting him, they shall not be troubled for the same. But by s. 2. if any such forester, &c. shall, by reason of malice or ill will, maliciously pretend against any person passing through their liberties, that he came there to trespass or misdo, and so kill him; it shall be done in respect to the death of such person as in case of any other person killed who was in the king's peace. By 1 Hen. 7. c. 7. E. & I. at such time as information shall be made of unlawful huntings by night, or with painted faces, to any of the king's council, or justices of peace, of any person suspected thereof, it shall be lawful to any of the same council or justices of peace, to make a warrant to the sheriff, or to any constable or other officer, to take the person, and to have him before the maker of such warrant, or any other the king's council, or justice of peace of the county, and the counsellor or justice shall have power to examine him; and if the person willingly conceal the huntings, or any person with him defective therein, the concealment shall be against every such person, felony; and if he then confess the truth, and all that he knoweth in that behalf, the offence of hunting shall be but trespass finable at the next general sessions of the peace. And if any rescous or disobedysance be made to any person, having authority by any such warrant, by any person which should be arrested, so that the execution of the warrant be not had, the rescous and disobedysance shall be felony. And if any persons be convict of any such huntings, with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, the persons so convict shall have like punishment as if they were convict of felony. But this statute is superseded in England by the

the 9 Geo. 1. c. 22. *ante* p. 624. which makes it a capital felony to hunt in disguise. 9 Geo. 1. c. 22. Eng.

With respect to deer in particular; so much of the 9 Geo. 1. as relates to the offence of singly killing, &c. deer in a park enclosed, appears to be superseded by the 16 Geo. 3. c. 30. Eng. which, as amended by the 42 Geo. 3. c. 107. Eng. enacts, that if any person shall wilfully course or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or carry away any red or fallow deer, kept or being in the enclosed part of any forest, chace, purlieu, or ancient walk, or any enclosed park, paddock, wood, or other enclosed ground wherein deer are, have been, or shall be usually kept, without the consent of the owner of such deer, or without being otherwise duly authorized; or shall be knowingly aiding, abetting, or assisting therein, such offender shall be guilty of felony, and being convicted upon indictment, shall be transported for 7 years. And if any person shall wilfully course or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away any red or fallow deer, kept or being in the unenclosed part of any forest, chace, purlieu, or ancient walk, without the consent of the owner of such deer, or without being otherwise duly authorized, or shall knowingly be aiding, &c. therein; he shall for every such act of wilful coursing or hunting, and for every such attempt to kill, wound, or destroy, and for every deer so taken or killed, wounded or destroyed, or shot or carried away, forfeit £50; and if the offender shall be a keeper of or entrusted with the care or custody of deer in such forest, &c. he shall forfeit double the penalty. And by the 16 Geo. 3. c. 30. s. 4. Eng. it shall be lawful for any justice of peace, upon complaint on oath by any credible person, that there is reason to suspect any person of having in his custody or possession, or in any dwelling-house, out-house, yard, garden, or place, any red or fallow deer, which shall have been unlawfully killed, or the head, skin, or other part thereof, or any slip, noose, toil, snare, or other engine for the

Penalty for killing, &c. deer in any enclosed ground, without authority.

16 Geo. 3. c. 30. s. 1. Eng.

(42 Geo. 3. c. 107. s. 1 & 2. Eng.)

Penalty for killing, &c. deer in the unenclosed part of any forest, &c.

16 Geo. 3. c. 30. s. 4. Eng.

Justices may grant warrants to search for heads and skins of deer, &c.

Penalty on person in whose custody such shall be found.

s. 5.

Powers of justices for the examination of suspected persons.

s. 6.

Suspected persons having fallow deer in their possession, how to be proceeded against.

the unlawful taking of deer, by warrant, to cause such person, and such dwelling-house, &c. to be searched; and if any such shall be found, to cause the same, and such person so having possession, or in whose dwelling-house, &c. the same shall be found, to be brought before any justice of peace having jurisdiction; and if such person shall not produce before such justice the party of whom he received the same, or satisfy such justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such slip, &c. or did not keep the same for any unlawful purpose, then such person shall forfeit any sum not more than £30. nor less than £10. at the discretion of such justice. And by s. 5. if any red or fallow deer suspected to have been unlawfully killed, or the head, &c. of such deer, shall, on search under a warrant from a justice of peace, be found in the possession of any person, or in any dwelling house, &c. or shall be proved to have been in the possession, house, &c. of any person who may be justly suspected to have come dishonestly or unlawfully by the same as aforesaid; and such person so in possession, or the owner or occupier of such dwelling-house, &c. shall not, under the provisions aforesaid, be liable to conviction; in such case, for the discovery of the party who actually killed or stole such deer, it shall be lawful for any justice having jurisdiction, as the evidence and circumstances shall require, to summon before him every person through whose hands such deer, or the head, &c. thereof, shall appear to have passed; and if the person from whom such deer, or the head, &c. shall appear to have been first received, or who, having had possession thereof, shall not give proof to the satisfaction of such justice, that he came lawfully by the same, such person shall, on every conviction, forfeit any sum not exceeding £30. nor less than £10. And by s. 6. if it shall appear on the oath of a witness, that any person hath had in his possession, house, &c. any red or fallow deer, or the head, &c. thereof, and shall be reasonably suspected to have come dishonestly or unlawfully thereby, then such person, and all others through whose hands

hands the same shall appear to have passed under the like suspicion, shall be proceeded against in like manner, and shall be liable to the same penalties, as if such deer, &c. had been found in the possession, house, &c. of such person, upon a search made by virtue of such warrant. By s. 7. if any person shall set, lay, or use any net, wire, slip, noose, toil, or other engine, for the purpose of taking or killing deer within or upon any forest, chase, purlieu, or ancient walk, or in the ring, or outer fence, or bank dividing the same from the adjoining lands; or in any enclosed park, paddock, wood, or ground, where deer are, have been, or shall be usually kept, (such person not being the owner of such forest, &c. or entrusted with the care of the deer within the same,) and shall be convicted of any such offence, he shall forfeit for the first offence, any sum not exceeding £10. nor less than £5. and for every other offence any sum not exceeding £20. nor less than £10. at the discretion of the justice before whom he shall be convicted. By s. 8. if any person shall wilfully pull down or destroy, (or cause, &c.) the pale, or any part of the walls of any forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without the consent of the owner, or person chiefly entrusted with the custody thereof, or being otherwise duly authorized, he shall be subject to the forfeiture hereby inflicted for the first offence of killing any deer. By s. 9. if any person carrying any gun, &c. sword, or other offensive weapon, shall come into any forest, chase, purlieu, or ancient walk, or into any enclosed park, paddock, wood, or into any other ground where deer are usually kept, be the same enclosed or not enclosed, with an intent unlawfully to shoot at, course, or hunt, or to take in any slip, &c. or other engine, or to kill, wound, destroy, or take away any red or fallow deer; it shall be lawful for every ranger or keeper, or person entrusted with the care of such deer, to seize and take from such person, in and upon such forest, &c. for the use of the owner, all such guns, &c. and all dogs there brought for coursing deer, in like manner as the game-keepers are empowered

s. 7.

Penalty on persons setting nets, &c. for taking deer in any forest, &c.

s. 8.

Penalty for pulling down pales, &c. in any forest, &c. to destroy deer.

s. 9.

Penalty for carrying fire-arms, into any forest, &c. to destroy deer.

*Penalty for re-
sisting ranger,
&c.*

s. 10.

*Jurisdiction of
justices as to
such offences.*

s. 15.

*Keeper of any
forest, &c. may
apprehend per-
son hunting, &c.
of deer, or laying
any net, &c.
therein.*

s. 11.

empowered by law, within their respective manors, to seize and take dogs, nets, or other engines, in the custody of persons not qualified to keep the same. And if any such person shall there unlawfully beat or wound any ranger or keeper, or his servants or assistants, in the execution of their office, or shall attempt to rescue any person in the lawful custody of such ranger, &c. he shall be guilty of felony, and being convicted on indictment, shall be transported for 7 years. By s. 10. upon complaint or information on oath of a witness, before a justice of peace having jurisdiction, of any offence against this act, it shall be lawful for such justice (except in cases where the justice is specially directed previously to summon the party before him) to cause the person charged to be apprehended by his warrant, and thereupon such justice shall hear and determine such complaint: And in case where it is provided by this act, that the party complained of shall be summoned to appear, if the party so summoned shall not appear, then on proof of the service of such summons, either personally, or by leaving the same at his dwelling house, lodgings, or other usual place of abode, it shall be lawful for the justice before whom he was summoned, to apprehend him by warrant, and to proceed as if no previous summons had been directed by this act. And by s. 15. it shall be lawful for any keeper or under-keeper, and their servants or assistants, to seize and apprehend upon the spot any person whom they shall discover in the act of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away any red or fallow deer, from any forest, chase, purlieu, or ancient walk, whether enclosed or not enclosed, or in any enclosed park, paddock, wood, or other enclosed ground, or attempting so to do: or in setting or laying any net, wire, slip, noose, toil, snare, or other engine, therein, for the taking, killing, or destroying of deer; and to carry such offender before some neighbouring justice of peace having jurisdiction, to be dealt with according to law. By s. 11. (as amended by the 42 Geo. 3. c. 107. s. 3.) the pecuniary penalties in this act may be recovered before a justice

tice of peace for the county, &c. in which the offence shall be committed, on the oath of a witness, or on confession, one moiety thereof to the king, to be paid for his use into the hands of such person as the justice shall direct, and the other to the informer; and in case of non-payment thereof, with the charges incident to the conviction, immediately upon the conviction, the same shall be levied by warrant of such justice, by distress, &c. and for want of sufficient distress, the offender (except in cases where it is otherwise provided by this act) shall be sent by the said justice to the common gaol of the county, &c. where the offence shall be committed, [*for 6 months,] unless the penalty and charges be sooner paid. And by s. 12. if upon conviction he doth not immediately pay the penalty, such justice may order him into custody, during such time, not exceeding 3 days, as such justice shall think proper to allow for return of the warrant of distress. Provided (s. 13.) that if it shall appear to such justice, either by confession of the party, or otherwise, that he hath not goods or chattels sufficient whereon to levy the penalty, such justice shall commit the party convicted, as if a warrant of distress had been issued, and *nulla bona* returned thereon. By s. 14. if any person committed for any first offence against this act, shall, before his commitment to prison, procure security to be given by 2 sufficient sureties, to the satisfaction of such justice, for payment of the penalty with the charges incident, within 6 days, inclusive of the day of conviction; it shall be lawful for such justice to accept such security, and upon non-payment thereof at the time stipulated, to cause such party and his sureties, to be apprehended by warrant, and commit them to the common gaol of the county, &c. where the offence was committed, for such time as the party was liable to have been imprisoned, if no security had been given, unless the penalty [†or] charges shall be sooner paid. And by s. 16. in case any offender for his first offence, shall, for want of sufficient distress, be committed to gaol, and

42 Geo. 3. c. 107.
s. 3. Eng.

*Penalties how
recovered and
applied.*

s. 12 & 13.

*Penalties how
enforced.*

s. 14.

Proviso.

† 2ue? "and."

s. 16.

*In what cases
offenders com-
mitted may be
enlarged.*

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shall

* This is the term of imprisonment in the 42 Geo. 3. c. 107, in case of non-payment of the penalty of £50. *ante* p. 829. But "one whole year" is the term limited by the 16 Geo. 3. c. 50. for the other penalties.

- shall, whilst in gaol, obtain the consent in writing of the prosecutor, and also of the owner, ranger, forester, keeper, or other person chiefly entrusted with the care of the deer in the forest, &c. wherein the offence was committed, for his enlargement; the justices of peace, at their quarter or general sessions, may cause such offender to be brought before them, and order the gaoler to set him at liberty. By s. 17. if any offender shall make discovery of any other offender so as he be convicted, he shall be discharged of all the penalties of this act by him incurred previous to such discovery. By s. 18. the conviction shall be certified by the justices by whom the same shall be made, to the next quarter sessions of the peace, to be there filed amongst the records; and shall be fairly written on parchment or paper in a form of words hereby prescribed, or to the like effect; which convictions shall not be quashed for want of any form or words. And by s. 19. no *certiorari* shall be allowed to remove any conviction or other proceeding on this act, unless the party convicted shall, before the allowance of such *certiorari*, become bound to the prosecutor in £100. with sufficient sureties as the justice before whom the offender was convicted [*shall approve of,] with condition to pay to the prosecutor, within 30 days after conviction confirmed, [†on] a *procedendo* granted, his full costs and damages, to be ascertained upon his oath; and shall become also bound to the justice before whom such conviction was made, with such sureties as such justice shall approve of, in the penalty of £60. with condition to prosecute such writ of *certiorari* with effect, and to pay to the justice the forfeiture, to be distributed as by this act is directed, or to render the person convicted to such justice, within 30 days after such conviction shall be confirmed, or *procedendo* granted; and in default thereof it shall be lawful to proceed to levy the penalty, as if no *certiorari* had been awarded. And by s. 20. after confirmation of any conviction by the superior courts at Westminster, and delivering the rule to the justice, whereby such conviction hath been confirmed, he may proceed against the party in the same manner as if a *procedendo* had been granted.

s. 17.

Encouragement
to offenders
making disco-
very.

s. 18.

Proceedings
upon convictions

s. 19.

On what terms
certiorari
granted.

* These words,
or some such,
omitted.

† Que? "or."

s. 20.

Proceeding af-
ter convictions
confirmed;

granted. Provided (s. 21.) that if any person shall think himself aggrieved by the judgment of any justice of peace, and shall not have removed the matter by *certiorari*, such person may appeal from such judgment to the general or quarter sessions of the peace to be held for the county, &c. where such person was convicted, next after 20 days from such conviction; giving to the prosecutor 6 days notice in writing of his intention of bringing and prosecuting such appeal, and of the matter thereof, and entering into a recognizance before a justice of peace for the county, &c. wherein the conviction was, with 2 sureties to be approved by the said justice, on [*conviction] to appear and try the appeal at the general or quarter sessions which shall be held for said county, &c. next after [†ten] days from the time of such conviction, and to abide by the order of such court, and for payment of such costs and charges as shall be awarded at said court; And if the conviction shall be there affirmed, the appellant shall pay to the prosecutor his full costs, to be ascertained by order of said sessions. And provided (s. 22.) that if any person thinking himself aggrieved as aforesaid, shall have paid the penalty, or shall be then imprisoned, he may appeal to the judgment, order, &c. on entering into recognizance by himself only, without surety, conditioned as before mentioned; the penalty remaining in the hands of such justice, or such person continuing in prison in the mean time, and until the merits of said appeal shall be determined. Provided also (s. 23.) that no such conviction or judgment given as aforesaid, shall be set aside by the said court [†or] general or quarter sessions, for want of form, or for want of stating, or through mistating, of any matter, in case the facts alleged in said conviction, or on which the same shall be grounded, shall be proved to the satisfaction of said court; but such appeal shall be decided on the merits of the case only; nor shall such conviction or judgment be removed or removeable by *certiorari*, or other writ or process, into any court of record at Westminster. By s. 24. if any person shall be sued or prosecuted for any thing done in pursuance of this act, he may plead the general issue, and

s. 21.

Appeal to quarter sessions.

*Que? "condition."

†Que? "twenty."

s. 22.

What recognizance for prosecuting appeal by persons who pay penalty.

s. 23.

Proceedings not quashed for form.

†Que? "of."

s. 24.

*Pleading.**Costs.*

s. 26.

Limitation for actions.

s. 25.

Limitation for prosecutions.

42 Geo. 3. c. 107. s. 4. Eng.

Persons convicted of a 2nd offence for which a pecuniary penalty is imposed, transported for 7 years.

† "felon" in the act.

s. 5.

*Conviction for 1st offence transmitted to quarter-sessions.**Penalty for destroying covert for deer.*

28 Geo. 2. c. 19. s. 3. Eng.

shall have treble costs of verdict, nonsuit, discontinuance, or judgment upon demurrer. And by s. 26. all actions, writs, and prosecutions, for any thing done in pursuance of this act, shall be laid and tried in the county or place where the fact was committed, and shall be commenced within 6 calendar months after the fact. And by s. 25. prosecutions for offences against this act, shall be commenced within 12 calendar months after the offence: And such persons as shall be prosecuted under this act, shall not be liable to prosecution for the same offence under any other act, or in any court of attachment, swainmote, eyre, or any forest court. The 42 Geo. 3. c. 107. E. further provides (s. 4.) that if any person after having been duly convicted of any offence for which a pecuniary penalty is imposed by this act, or by the 16 Geo. 3. *supra*, shall offend a 2nd time, by committing any offence against this act for which a pecuniary penalty is herein-before imposed, such 2nd offence, whether it be the same as the 1st, or be any other of the said offences, shall be deemed a [*felony], and the person guilty thereof, being convicted upon indictment, shall be transported for 7 years. And by s. 5. the justice before whom any person shall be convicted, for the 1st time, of any offence against this act, for which a pecuniary penalty is imposed, shall transmit such conviction under his hand and seal to the quarter session which next after such conviction shall be holden for the county, &c. wherein such 1st offence was committed, to be filed amongst the records of the court; and such conviction so filed, or a true copy thereof, certified by such clerk of the peace, or other proper officer, or proved to be a true copy, shall be sufficient evidence to prove the conviction for such 1st offence.

The following clause of the 28 Geo. 2. c. 19. Eng. may be here stated, as principally directed to the preservation of covert for deer. By s. 3. of this act, if any person, not having a right or legal license to do the same, shall set fire to, burn, or destroy (or abet, aid, or assist therein) any goss, furze, or fern, in any forest or chase, within England, without the consent of the owner,

owner, or person chiefly entrusted with the care of such forest, &c. or some part thereof, and being brought before a justice of peace for the county, &c. where such forest, &c. shall lie, shall be thereof convicted by confession, or upon the oath of a witness, or upon the view of such justice, he shall forfeit any sum not exceeding £5. nor less than 40s. one moiety to the informer, and the other to the use of the poor of the parish where the offence shall be committed; which penalty, if not forthwith paid, shall be levied by distress, &c. and if no sufficient distress can be found, the justice shall commit him to the common gaol of such county, &c. for any time not exceeding 3 months, nor less than 1 month.

Next as to hares in particular: By the 14 & 15 Hen. 8. c. 10. Eng. no person shall trace, destroy, or kill any hare in the snow, with any dog, bow, or otherwise: and the sessions or leet may inquire thereof; and after inquisition found, they shall, for every hare so killed, cess upon every offender 6s. 8d. to be forfeited to the king, if found in the sessions, and to the lord of the leet, if in the leet. And by the 1 Jac. 1. c. 27. s. 2. Eng.* every person who shall trace or course any hares in the snow; or at any time take or destroy any hares with any hare-pipes, cords, or any such instruments, or other engines; and such offence being proved by confession, or the oaths of 2 witnesses, before 2 justices of the same county, &c. where the offence shall be committed, or the party apprehended; shall be committed by said justices to the common gaol of the county, &c. where the offence shall be committed, or the party apprehended, for 3 months, unless such offender shall, forthwith, pay to the churchwardens of the parish where the offence shall be committed, or the party apprehended, to the use of the poor, 20s. for every hare which he shall so take, kill, or willingly destroy; or after one month after his commitment, become bound with 2 sureties by recognizance, in the sum of £20. a-piece, with condition that such offender shall not thereafter shoot at, kill, take, or destroy
said

Penalty for tracing, &c. hares in the snow.

14 & 15 Hen. 8. c. 10. Eng.

1 Jac. 1. c. 27. s. 2. Eng.

Penalty for destroying hares, with hare-pipes, &c.

* This act is in part repealed by the 48 Geo. 3. c. 93. s. 1. E.

said game, by any of the means aforesaid : which recognizance shall be taken by 2 justices of peace of the county, &c. where the offender shall be imprisoned, and returned to the next quarter sessions to remain of record.

s. 4.

Penalty for selling or buying to sell again, hares, &c.

And by s. 4. every person which shall sell, or buy to sell again, any hare, shall forfeit 10s. one moiety thereof to him that will sue by bill, indictment, or information, and the other to the poor of the parish where the offence shall be committed.

s. 5.

Proviso.

By s. 5. no person shall be punished by any former law, for any offence for which by this law any punishment is inflicted : And all justices of assize in their circuits, and justices of peace in their quarter sessions, and any 2 justices of peace out of sessions, may hear and punish all offences against this act.

22 & 23 Car. 2. c. 25. s. 6. Eng.

And the 22 & 23 Car. 2. c. 25. s. 6. Eng. further enacts,

Penalty for using snares, &c. for hares.

that if any person shall be found or apprehended setting or using any snares, hare-pipes, or other like engines, and be thereof convicted by confession, or oath of a witness, within a month after the offence, before a justice of peace of the county wherein such offence shall be committed, he shall give to the party injured such damages, and within such time, as said justice shall appoint, and shall pay down presently to the overseers for the use of the poor of the parish where the offence shall be committed, such sum not exceeding 10s. as the justice shall appoint : and if such offender shall not make such recompense to the party, and pay said sum to the poor, he shall be committed to the house of correction for such time as the justice shall think fit, not exceeding a month.

9 Ann. c. 25. s. 3. Eng.

And by the 9 Ann. c. 25. s. 3. Eng. if any person shall take or kill any hare, [pheasant, partridge, moor, heath-game, or grouse] in the night time, he shall incur such forfeitures, pains, and penalties, to be recovered by such means, within such time, and to such uses, as by the 5 Ann. c. 14. *ante* p. 824. are inflicted upon higlers, &c. for buying or selling of game. The

Penalty for killing hares in the night.

13 Geo. 3. c. 80. s. 1. Eng.

13 Geo. 3. c. 80. Eng.* further enacts, that if any person shall knowingly and wilfully kill, take, or destroy any hare, [pheasant, partridge, moor-game, or heath-game,] or use any gun, dog, snare, net, or other engine, with intent

Killing or endeavouring to kill hares at certain hours of the night prohibited.

* *Vide* 29 & 40 Geo. 3. c. 50. Eng. *ante* p. 773.

intent to kill, &c any hare, &c. in the night, *viz.* between the hours of 7 at night, and 6 in the morning, from the 12th day of October to the 12th of February, and between 9 at night and 4 in the morning, from the 12th of February to the 12th of October, he shall, being convicted on oath of a witness, before a justice of peace of the county, where the offence shall be committed, &c. forfeit for the 1st offence, any sum not exceeding £20.

nor less than £10. and for the 2nd offence any sum not exceeding £30. nor less than £20. But in case any information shall be made upon oath as aforesaid before a justice, and it shall appear that such offender hath been already convicted of a 1st and 2nd offence, then such justice shall commit him to the common gaol, or house of correction, till the next quarter session, unless he shall have entered into recognizance, with 2 sufficient securities, to appear at such sessions, then and there to be tried by indictment for said offence; and such justice shall bind over the informer to prosecute by indictment as aforesaid; and if upon such indictment the offender shall be convicted, he shall forfeit £50.; and if he shall not pay the same, he shall be committed to the common gaol or house of correction for such county, &c. for any term not less than 6 nor more than 12 calendar months, unless such penalty shall be sooner paid; and such offender shall, if the justices think proper, be once publicly whipped at the expiration of such commitment, in the town or place where such gaol or house of correction shall be, between the hours of 12 and 1 in the day.

And by s. 2. the conviction shall be in the form hereby prescribed: which the justice shall cause to be fairly written on parchment, and returned to the next quarter session, to be filed by the clerk of the peace: who (by

Penalty for such offences:

s. 2.

Form of conviction.

s. 3.) shall upon application by any person, forthwith, deliver a copy thereof, upon payment of 1s. for every such copy. And by s. 6. if any person shall upon a Sun-

s. 3.

Duty of clerk of the peace.

s. 6.

day, or Christmas day, in the day time, knowingly and wilfully take, kill, or destroy any hare, &c. or use any gun, dog, net, or engine, for taking, &c. any hare, &c. he shall, (being convicted thereof as aforesaid) be sub-

Penalty for killing game, or using a gun on Sunday or Christmas day.

ject

s. 4.

*Penalties how
recovered and
applied.*

ject to the like penalties as above enacted. By s. 4. the penalties for the 1st and 2nd offence, and also for a 3rd offence, upon conviction at the quarter sessions, together with the costs previous to and attending such conviction, (to be ascertained by the justice before whom the offender shall be convicted) shall be forthwith paid, one moiety to the informer, and the other to the poor of the parish or place where the offence shall be committed; and if such person shall not pay the same, or give security for the payment thereof, such justice shall cause the same to be levied by distress, &c.; and it shall be lawful for such justice to order such offender to be detained in custody, until return may conveniently be had to his warrant of distress, unless the party give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before said justice, on such day as shall be appointed for the return of said warrant, not exceeding 7 days from the taking such security; but if upon such return no sufficient distress can be had, then said justice shall commit such offender to the common gaol or house of correction, for 3 calendar months, unless the forfeiture shall be sooner paid, or until such offender shall give notice to the informer that he intends to appeal to the next quarter sessions, and shall enter into a recognizance before a justice, with 2 sufficient sureties, conditioned to try such appeal, and to abide the order of, and pay such costs as shall be awarded by, the justices at such sessions; which notice of appeal shall not be less than 14 days before the trial thereof; and the justices at such sessions, upon due proof of such notice being given, and of the entering into such recognizance, shall determine the appeal in a summary way, and award costs to either party, as they shall think proper; and the determination of such sessions shall be final.

s. 7.

*Penalties how
enforced where
offender dwells
in another coun-
ty.*

And by s. 7. if the offender dwell in another county than that in which the offence was committed, the justice before whom such information or indictment was had, may direct his warrant of apprehension, and distress, &c. to any constable within the county, &c. where the offence was committed, to be by him carried

to

to a justice residing near the place where the offender dwells, to be signed by him on the back of said warrant, upon proof on oath of the hand-writing of the justice who first granted the warrant; which indorsement shall be sufficient authority for the constable of the parish or township where he dwells, or where his goods, &c. are to be found, or for such constable, who shall bring the said warrant to be indorsed, to apprehend and convey such offender before the justice who first granted the warrant, or any other justice of the county where the offence was committed, or for such constable to levy such penalty by distress, &c; and also where no sufficient distress can be had, to convey the offender before the justice who first granted the warrant of distress, or any other justice of that county where the offence was committed, to be dealt with according to law; and the justice who indorsed the warrant of distress or apprehension, shall direct the constable or other person making the distress, to deliver over the money arising from such distress, &c. to the justice who first granted the warrant; and if such constable or other person shall not pay such money, or deliver over all proceedings had upon such distress and sale, or warrant of apprehension, such justice who first granted the warrant, or the justice who indorsed it, may commit such constable, &c. to the common gaol, or house of correction, for 6 months, or until the money shall be paid, and the proceedings delivered over to the justice who first granted the warrant, or, in case of his absence or death, to any other justice of the same county: And no action, &c. shall be sued or prosecuted against the justice of such other county who indorsed such warrant, for indorsing the same. By s. 8. no order made, nor other proceedings, shall be quashed for want of form, or removed by *certiorari*, or other writ or process, into any court of record at Westminster. And by s. 9. no person shall be proceeded against for any offence against this act, unless information shall be made thereof upon oath, before a justice of peace of the county, &c. wherein such offence shall be committed, within a calendar

s. 8.

*Proceeding not
to be quashed for
want of form,
nor removed.*

s. 9.

Limitation.

9 Geo. 1. c. 22.
s. 1. Eng.

lendar month after such offence. The clause of the Black Act (*ante* p. 624.) which relates to offences in warrens or places where hares or conies are kept, is to be here referred to.

Penalty for
breaking or en-
tering parks,
&c. wherein
conies are kept.
3 Jac. 1. c. 13.
s. 2. Eng.

By the 3 Jac. 1. c. 13. s. 2. Eng. if any person shall wrongfully or unlawfully enter into any park, or other grounds enclosed with wall, pale, or hedge, and used for the keeping of conies, and wrongfully, &c. hunt, drive, or chase out, or take, or kill any conies within such enclosure, against the will of the owner, occupier, or possessor, and be convicted at the suit of the king, or party grieved, he shall be imprisoned for 3 months, and also pay to the party grieved his treble damages and costs, (to be assessed by the justices before whom he shall be convicted,) and find sureties for his good

s. 3.

Offences where
inquitable.

abearing for 7 years, or else continue in prison until he find sureties, during said 7 years. By s. 3. the justices of *oyer* and *terminer*, justices of assize, justices of peace and gaol delivery in their sessions, shall have power to inquire, &c. by examination of the offenders, and to award process as well upon indictments as by bill of complaint, information, or action. And by s. 4. it shall

s. 4.

Party may re-
cover treble da-
mages.

be lawful to the party grieved to take his further remedy against such offenders for his damages, and to recover the treble value as well before the justices of *oyer* and *terminer*, justices of assize, and justices of peace and gaol delivery, in their sessions, as in any court of record at Westminster; and upon satisfaction of the treble damages to the party, or upon the acknowledgment thereof before the justices in open sessions, the party grieved may release the suretyship of the good behaviour, at any time within 7 years. And by s. 6. if any person

s. 6.

In what cases
the justices may
discharge the
suitor of his re-
cognizance for
good behaviour.

shall be bound for his good abearing, according to this act, and shall, within 7 years, come before the justices of peace of the county where the offence was committed, in open quarter-sessions, and there confess his offence, and that he is sorry therefore, and satisfy the party grieved according to this act, the justices shall have power, within the 7 years, to discharge the recognizance.

s. 7.

Proviso.

Provided (s. 7.) that this act do not extend to any park or enclosed ground hereafter to be made for conies, without

without license of the king. The 22 & 23 Car. 2. c. 25. 22 & 23 Car. 2. c. 25. s. 4. Eng.
 s. 4. Eng. further enacts, that if any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, Penalty for killing conies in a warren not enclosed. (although the same be not enclosed,) and there shall chase, take, or kill any conies, against the will of the owner or occupier, and shall be thereof convicted by confession, or by the oath of a witness, within a month after the offence committed, before a justice of peace, of the county, &c. where the offence shall be committed, he shall yield to the party grieved treble damages and costs, and be imprisoned for 3 months, and till he shall find sureties for his good abearing. And by s. 5. no person shall kill or take in the night, any conies upon the borders of warrens or other grounds lawfully used for the breeding or keeping of conies, Penalty for killing or taking conies on the borders of any warren, in the night: (except such as shall be owner of the soil, or lawful possessor of the ground, or persons employed by them) upon pain that the offender, on conviction (as above) shall give to the party injured such damages, and in such time, as shall be appointed by the justice, and also pay down presently to the overseers of the poor, such sum, not exceeding 10s. as such justice shall appoint, which if he shall not do, the justice shall commit him to the house of correction, for such time as he shall think fit, not exceeding a month. And by s. 6. if any person shall be found setting or using any snares, hare-pipes, or other like engines for taking of conies, and shall be thereof in like manner convicted, he shall be liable to the like penalties as in s. 5. *supra*. s. 6. By s. 9. any person aggrieved by any judgment given by any justice of peace by virtue of this act, may appeal to the justices of peace in their next quarter-sessions; whose judgment shall be final, if no title to any land, royalty, [or fishery,] be concerned in said appeal. Appeal to quarter-sessions. By s. 10. this act shall not extend to the abridging of any royalty or prerogative royal of his majesty, nor to alter the forest laws. Saving of royalties. And by the 5 Geo. 3. c. 14. s. 6. Eng. if any person shall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not enclosed, 5 Geo. 3. c. 14. s. 6. Eng. and

Further punishment for entering warrens in the night, and taking or killing conies there.

s. 7.

Proviso.

s. 8. & 9.

Proviso as to conies on the sea or river banks in the county of Lincoln, &c.

9 Geo. 1. c. 22.
s. 1. Eng.

Punishment of those who finding hawks, conceal them.

34 Edw. 3. c. 22.
E. & I.

and shall then and there take or kill any coney, against the will of the owner or occupier, or shall be aiding and assisting therein, and shall be convicted thereof before any justices of *oyer and terminer* or general gaol delivery for any county where the offence shall be committed, he shall be transported for 7 years, or suffer such lesser punishment by whipping, fine, or imprisonment, as the court shall award. Provided (s. 7.) that no person who shall be convicted of any offence against this act, shall be convicted of any such offence under any former act. And provided (s. 8.) that it shall be lawful for any person to enter upon the sea and river banks in the county of Lincoln, erected for the preservation of the adjoining lands from being overflowed by the sea or river waters, so far as the flux and reflux of the tide does extend, or upon any land or ground within one furlong of such banks, and to kill, take, and carry away, in the day time, to his own use, any conies found upon such banks or ground (which are recited to be mischievous to said banks) within the said county, such person doing as little damage as may be to the owner or tenant of such banks, &c. And by s. 9. no person shall be obliged to make satisfaction for any damages occasioned by such entry, unless such damages shall exceed 1s. The clause of the 9 Geo. 1. c. 22. Eng. *ante* p. 624. is to be here also referred to.

Next as to the winged game: For the preservation of the property in hawks, the 34 Edw. 3. c. 22. E. & I. enacts, that every person which findeth a falcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring it to the sheriff; and the sheriff shall make proclamation in all the good towns in the county, that he hath such a hawk in his custody; and if he is challenged, let the lord who proveth it to be his, pay the costs, and have his hawk; and if none come within 4 months to challenge him, the sheriff shall have the hawk, making gree to him that did take him, if he be a simple man; and if he be a gentleman, and of estate to have the hawk, the sheriff shall redeliver the hawk, taking of him reasonable costs for the time that he had him in his custody. And this act is enforced and amended

amended by the 37 Edw. 3. c. 19. E. & I. which enacts, 37 Edw. 3. c. 19. E. & I.
 that if any man steal a hawk, and the same carry away, Stealing of hawks, felony.
 not observing the ordinance aforesaid, it shall be done
 of him as a thief that stealeth a horse, or other thing.
 And by the 11 Hen. 7. c. 17. Eng. no man shall take 11 Hen. 7. c. 17. Eng.
 any ayre, faulcon, goshawk, tassel, laner, or laneret,
 in his warren, wood, or other place; nor purposely Penalty for taking, &c. hawks
 drive them out of their coverts accustomed to breed in,
 or cause them to go to other coverts to breed; nor slay
 them for any hurt done by them, on pain of £10. half
 to him that will sue by action of debt, by examination
 before the justices of peace, or otherwise, and half to the
 king. And no person shall take, or cause to be taken, Penalty for taking hawk's eggs.
 on his own ground, or any other man's, the eggs of any
 faulcon, goshawks, or laners, out of the nest, upon pain
 of imprisonment of a year and a day, and fine at the
 king's will, one half to the king, and the other to the
 owner of the ground where the eggs were so taken;
 and the justices of peace shall have authority to deter-
 mine such matter. And the 5 Eliz. c. 21. Eng. further 5 Eliz. c. 21. s. 3. Eng.
 enacts, that if any person shall take away any hawk, or
 its eggs, by any means unlawfully, out of the woods or Further penalty for taking hawks or their eggs.
 grounds of any person, and be thereof convicted at the
 suit of the crown, or party grieved, he shall suffer im-
 prisonment for 3 months, and yield to the party treble
 damages; and after 3 months, shall find sureties for
 his good abearing for 7 years, or else remain in prison
 for said 7 years. By s. 5. the party grieved may recover s. 5.
 his treble damages before justices of *oyer and terminer*,
 justices of assize, justices of peace, or in any court Party grieved may recover treble damages.
 of record; and upon satisfaction of such damages, or
 upon the confession thereof before the said justices in
 open sessions, the party grieved may release the surety-
 ship of good abearing at any time within 7 years.
 And by s. 6. the justices of *oyer and terminer*, justices s. 6.
 of assize, justices of peace and gaol delivery, in
 their sessions, shall have power to hear said offences, Offences where inquirable.
 and award process, as well upon indictments, as by bill
 of complaint, information, or other action. And by
 s. 7. if any person bound to his good abearing as afore-
 said s. 7.

*In what cases
the justices may
release the offen-
der.*

11 Hen. 7. c. 17.
Eng.

*What hawks a
man shall bear.*

*Qualification to
keep swans.*

22 Edw. 4. c. 6.
E. & L.

11 Hen. 7. c. 17.
Eng.

*Penalty for tak-
ing swan's eggs.*

1 Jac. 1. c. 27.
s. 2. Eng.

Further penalty.

said, shall, within 7 years, come before the justices of peace of the said county where the offence was committed, or some of them, in open sessions, and there acknowledge his offence, and satisfy the party, such justices may discharge the recognizance, and also the party bound. It is a further provision of the 11 Hen. 7. c. 17. Eng. *supra*, that no man shall bear any hawk of the breed of England, called a nyesse, goshawk, tassel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And any person bringing a nyesse hawk from beyond the sea, shall bring a certificate under the customer's seal of the port where he first landed; and the person that bringeth any such hawk to the king, shall have a reasonable reward, or else the same hawk for his labour.

As to swans: The 22 Edw. 4. c. 6. E. & L. enacts, that no person (other than the king's son) unless he have lands of freehold to the value of 5 marks a year, shall have any mark or game of swans; on pain of forfeiting the swans, half to the king, and half to the person (having lands of said value) who shall seize the same. And by the 11 Hen. 7. c. 17. Eng. no man shall take (or cause, &c.) upon his own ground, or other man's, the eggs of any swan out of the nest, upon pain of imprisonment for a year and a day, and fine at the king's will; and the justices of peace shall have authority to hear the matter, as well by inquisition as information and proofs; and one half of said fine shall be to the king, and the other to the owner of the swan. And by the 1 Jac. 1. c. 27. s. 2. Eng. every person who shall take the eggs of any swan out of the nest, or willingly break or spoil them in the nest, and shall be convicted thereof by confession, or oath of 2 witnesses, before 2 justices of peace of the county, &c. where the offence was committed, or the party apprehended, shall be committed to the common gaol of said county, &c. for 3 months, unless the offender shall forthwith pay to the church-wardens of the parish where the offence was committed, or the party apprehended, 20s. for every egg; or, after one month after his commitment, become bound

bound with 2 sureties by recognizance, in £20. a-piece, with condition that he shall not thereafter destroy said game as aforesaid; which recognizance shall be taken by 2 justices of peace of the county, &c. where the offender shall be imprisoned, and shall be returned to the next quarter-sessions, to remain of record.

The 11 Hen. 7. c. 17. Eng. not only protects hawks and swans, but also pheasants and partridges, from spolia-
 tion or destruction; and for this purpose enacts, that no person shall take (or cause, &c.) any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special license of the owner or possessor of the same, on pain of £10. half to him that will sue, and half to the owner, &c. of the ground where they shall be taken.

Penalty for taking partridges or pheasants on another man's ground.

11 Hen. 7. c. 17. Eng.

And by the 1 Jac. 1. c. 27. Eng. every person who shall shoot at, kill, or destroy any pheasant, partridge, [house-

1 Jac. 1. c. 27. s. 2. Eng.

dove or pigeon, heron, mallard, duck, teal, widgeon, grouse, heath-cock, more-game, or any such fowl,] with any gun, cross-bow, stone-bow, or long-bow; or shall take, kill, or destroy them, with setting dogs and nets,

Penalty for taking or destroying partridges or pheasants; or their eggs.

or with any nets, snares, engines or instruments; or shall take the eggs of any pheasant or partridge out of the nest, or willingly break, spoil, or destroy them in the nest; and the same offence being proved by confession of the party, or by the oaths of 2 witnesses, before 2 justices of peace of the same county, &c. where the offence shall be committed, or the party apprehended, shall by said justices be committed to the common gaol of the county, &c. where the offence shall be committed, or the party apprehended, for 3 months, unless he shall forthwith, upon conviction, pay to the churchwardens of the parish where the offence shall be committed, or the party apprehended, to the use of the poor, 20s. for every pheasant, partridge, &c. or egg, so taken, &c.; or after a month after his commitment, together with 2 sureties, become bound by recognizance in £20. a-piece to the king, not to shoot at, kill, take, or destroy any of the games herein-mentioned: such recognizances to be taken by any 2 justices of peace of the county, &c. where the offender shall be imprisoned,

s. 4.

Penalty for selling, or buying to sell again.

**Vide s. 5. ante p. 838.*

7 Jac. 1. c. 11. s. 8. Eng.

Further penalties for taking or killing them with nets, &c.

s. 9.

Officers may search houses for dogs or nets.

23 Eliz. c. 10. s. 2. Eng.

Penalty for taking or killing pheasants or partridges in the night.

imprisoned, and to be returned to the next quarter-sessions, to remain of record. And by s. 4. every person who shall sell, or buy to sell again, any partridge or pheasant (except partridges and pheasants reared and brought up in houses, or brought from beyond sea,) shall forfeit for every partridge, 10s. and for every pheasant, 20s.; one moiety to him that will sue by bill, indictment or information, and the other to the poor of the parish where the offence shall be committed.* And by the 7 Jac. 1. c. 11. s. 8. Eng. every person which shall take, kill, or destroy any pheasant or partridge, with setting-dogs and nets, or otherwise with any nets, snares, or engines; (being proved by his confession, or oath of a witness, before 2 justices of peace of the same county, &c. where the offence shall be committed, or the party apprehended,) shall be committed to the common gaol of the county, &c. where the offence shall be committed, or the party apprehended, for 3 months, unless the offender shall forthwith pay to the church-wardens or overseers of the poor of the parish where the offence shall be committed, 20s. for every pheasant or partridge so taken, &c.; and further shall become bound by recognizance in £20. that he shall not thereafter take, &c. any pheasant, &c; which recognizance shall be taken by any justice of peace of the county, &c. where the offence shall be committed, and shall be returned to the next quarter-sessions, there to remain of record. And by s. 9. every constable and head-borough shall, bringing a warrant under the hands of 2 justices of peace of the county, &c. have power to enter into and search the house of any person (other than such as by s. 7. ante p. 821. are allowed to take pheasants and partridges) being suspected to have any setting-dogs or nets for taking of pheasants and partridges; and the same dogs or nets to take, kill, destroy, and cut in pieces. With respect to destroying this game in the night-time, the 23 Eliz. c. 10. s. 2. Eng. enacts, that no person shall take, kill, or destroy any pheasants or partridges, with any nets or other devices, in the night-time, upon pain of forfeiting for every pheasant, 20s. and for every partridge, 10s.; which if he do not pay within 10 days after

after his conviction, he shall have a month's imprisonment; and besides such forfeiture or imprisonment, he shall put in bond with good sureties, for 2 years, that he shall not take, &c. any partridges or pheasants contrary to this act; the same bond to be taken by a justice of peace of the county where the offence shall be committed: The one half of said forfeitures to the lord of the manor, and the other to such person as shall sue by bill, plaint, or information, in any court of record. But

by s. 3. if such person to whom the half of the forfeiture is appointed, shall dispense with or procure any taking, &c. of partridges, &c. contrary to this act; then all such forfeitures as such persons should have, shall be to the poor of the parish, and be levied by any one of the church-wardens. By s. 5. the justices of assize in their circuits, and justices of peace in their sessions, and stewards of leets, liberties, and law-days, shall inquire of offences against this act; and every justice of peace within the limits of his commission, shall have power to examine all such offenders, if the offences shall not before be determined by the justices of assize, or stewards of leets, &c.; and also to take bond with sureties for their appearance that shall so offend, to appear at the next general sessions of the peace within said county, to answer the offence, and pay the penalties, or receive the punishment. But by s. 6. this act shall not extend to lowbellers, tramellers, or others, which shall unwillingly happen to take partridges or pheasants by night, so as they do presently let them go without wilfully hurting them. The clauses of the 9 Ann. c. 25. Eng. and 13 Geo. 3. c. 80. Eng. and 39 & 40 Geo. 3. c. 50. Eng. which relate also to the taking or destroying partridges in the night-time, have been already stated, *ante* p. 773-838. With respect to the season of the year at which it is lawful to kill pheasants or partridges, the 23 Eliz. c. 10. Eng. recites, that hawking in the beginning of harvest is destructive to young pheasants and partridges; and therefore enacts (s. 4.) that no person shall hawk, or with his spaniels hunt, in any ground where corn or other grain shall grow, (except it be in

s. 3.

Penalty how applied, where lord of manor dispenses with such killing, &c.

s. 5.

Offences where inquirable.

s. 6.

Proviso.

9 Ann. c. 25. Eng.

13 Geo. 3. c. 80. Eng.

39 & 40 Geo. 3. c. 50. Eng.

23 Eliz. c. 10. s. 4. Eng.

Penalty for hawking in eared or coddled corn standing.

his own ground,) at such time as any eared or coddled corn or grain shall be standing and growing, nor before it shall be shocked, cocked, hilled or copped; upon pain of forfeiting to the owner of such corn, 40s. to be recovered as in s. 2. *supra*. And by the 7 Jac. 1. c. 11. s. 2. Eng. every person which shall hawk at, destroy or kill any pheasant or partridge, with hawk or dog, by colour of hawking between the first of July and last of August, (being proved by his confession, or oath of 2 witnesses, before 2 justices of peace of the county &c. where the offence shall be committed, or the party apprehended) shall be committed to the common gaol of said county, &c. for a month, unless the offender shall forthwith pay to the church-wardens of the parish, or overseers of the poor, where the offence shall be committed, or the party apprehended, to the use of the poor, 40s. for every such hawking, and 20s. for every pheasant or partridge which such person shall so take, kill, or destroy. By s. 3. the party so punished shall not for the same offence be punished by any other law. And by s. 4. no offender shall be impeached by this act, unless accused within 6 months. And by the 2 Geo. 3. c. 19. Eng. (as amended by the 39 Geo. 3. c. 34. Eng.) no person shall, upon any pretence, take, kill, carry, sell, buy, or have in his possession or use, any partridge between 1 February and 1 September, or any pheasant between 1 February and 1 October, yearly, on pain of forfeiting (being convicted by the oath of a witness) £5. for every partridge, &c. so taken, &c. to the person who shall inform or sue for the same; to be recovered with full costs, by action of debt, &c. in any court of record at Westminster; so as such action, &c. shall be brought within 6 months after the thing done. Provided (s. 2.) that this act (2 Geo. 3.) shall not extend to any pheasant which shall be taken in the season allowed by this act, and kept in any mew or breeding-place. By s. 3. this act shall not extend to Scotland.

The 1 Jac. 1. c. 27. s. 2 & 5. Eng. which relates to the offence of shooting at, killing or destroying doves or pigeons, with gun, cross-bow, stone-bow, or long-bow, has been

7 Jac. 1. c. 11.
s. 2. Eng.

*At what time
hawking at pheasants
or partridges unlawful.*

s. 3.

Proviso.

s. 4.

Limitation.

2 Geo. 3. c. 19.
s. 1. 4 & 6. Eng.
(39 Geo. 3. c. 34.
Eng.)

*Within what
times, taking,
killing, &c.
them in any
manner, prohibited.*

s. 2.

Proviso.

s. 3.

Scotland excepted.

*Penalty for
shooting at, &c.
house-doves or
pigeons.*

1 Jac. 1. c. 27.
s. 2 & 5. Eng.

been

been already stated *ante* p. 847. And the 2 Geo. 3. ^{2 Geo. 3. c. 29.} c. 29. Eng. further enacts, that if any person shall shoot ^{s. 1. Eng.} at with an intent to kill, or shall by any means kill, or take with a wilful intent to destroy, any house-dove or pigeon, and shall be convicted by his confession, or oath of a witness, before a justice of peace of the county, &c. ^{*Penalty for taking or killing in any manner, any house-dove or pigeon.*} where such offence shall be committed, or the party apprehended, he shall forfeit 20s. to the person who shall inform and prosecute to conviction such offender; and if such forfeiture shall not be forthwith paid, it shall be lawful for such justice to commit such offender to the common gaol of the county, or house of correction in the place where the party is convicted or apprehended, to be kept to hard labour for any time not exceeding 3 calendar months, nor less than 1 calendar month, unless the forfeiture be sooner paid. But by s. 2. nothing in this act shall hinder any owner of a dove-cote, pigeon-house, or other place for the preservation or breeding of pigeons, from taking, killing, or destroying any house-dove or pigeon, which shall be taken in such dove-cote, &c. And by s. 3. persons convicted on this act, shall not be convicted under any former act; and prosecutions on this act shall be commenced and carried on with effect within 2 calendar months after the offence; and persons imprisoned for default of payment of the penalty, shall not be liable afterwards to pay such penalty. ^{s. 2.} ^{*Proviso.*} ^{s. 3.} ^{*Proviso.*} ^{*Limitation.*}

The 1 Jac. 1. c. 27. s. 2 & 5. Eng. *ante* p. 847. extends in like manner to mallards, ducks, teals, and wildgeons, as to pheasants or partridges. The season for killing this species of wild-fowl is regulated by the 25 Hen. 8. c. 11. Eng. which enacts, that no person, between the last day of May and last day of August, yearly, shall take (or cause, &c.) any wild ducks, mallards, wildgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4d. half to the king, and half to him that will sue by action of debt, in any of the king's courts, wherein, &c. And by s. 3. all justices of peace within their jurisdictions, may inquire, &c. of such offences, as in cases of trespass. But by s. 4. any gentleman, ^{*Penalty for shooting, &c. water fowl.*} ^{1 Jac. 1. c. 27. s. 2 & 5. Eng.} ^{25 Hen. 8. c. 11. s. 2. Eng.} ^{*Penalty for taking them in the moulting season.*} ^{s. 3.} ^{*Where inquirable.*} ^{s. 4.}

*Proviso as to
freeholders.*

s. 5.

*Penalty for de-
stroying their
eggs.*

9 Ann. c. 25.
s. 4. Eng.

10 Geo. 2. c. 32.
s. 10. Eng.

*Penalty on tak-
ing water fowl
in nets in the
moulting season.*

*Penalty for tak-
ing or destroy-
ing grouse, &c.
or their eggs.*

1 Jac. 1. c. 27.
s. 2 & 5. Eng.

13 Geo. 3. c. 55.
s. 1. 2 & 3. Eng.

*Times within
which killing
black game, red
game, or bus-
tards, prohibited.*

man, or other that may dispend 40s. by the year of freehold, may hunt and take such wild-fowl with their spaniels only, without using any net or other engine, except a long-bow. And by s. 5. no person from 31 March to 30 June yearly, shall willingly destroy or take any eggs of any mallard, teal, or other wild-fowl, from the nest or place where they shall be laid, on pain of a year's imprisonment, and of forfeiting for every egg a penny, half to the king, and half to him that will sue as aforesaid: and justices shall have power to hear the same as aforesaid. But by the 9 Ann. c. 25. s. 4. Eng. (as amended by the 10 Geo. 2. c. 32. s. 10. Eng.) if any person in any year between 1 June and 30 October, shall by hays, tunnels, or other nets, drive and take any wild-duck, teal, widgeon, or other water-fowl, in any marsh or place of resort for wild-fowl, and shall be convicted before a justice of peace for the county where the offence shall be committed, by the oath of a witness, he shall for every such water-fowl forfeit 5s. one moiety to the informer, and the other to the poor of the parish, to be levied by distress, &c.; and for want of distress, he shall be committed to the house of correction for any time not exceeding a month, nor less than 14 days, there to be whipped and kept to hard labour: And such justice shall order the hays, &c. to be seized and destroyed in his presence.

With respect to grouse, heath-cocks, or moor-game, the 1 Jac. 1. c. 27. s. 2 & 5. Eng. *ante* p. 847. extends also to this species of game. And the 13 Geo. 3. c. 55. Eng. further enacts, that no person shall, upon any pretence, wilfully take, kill, destroy, carry, sell, buy, or have in his possession or use, any heath-fowl, commonly called "black game," between 10th December and 20th August; nor any grouse, commonly called "red game," between 10th December and 12th August; nor any bustard between 1st March and 1st September in any year; on pain of forfeiting for the 1st offence, any sum not exceeding £20. nor less than £10.; and for every subsequent offence any sum not exceeding £30. nor less than £20.; to be recovered by action of debt, &c. in any court

court of record at Westminster: provided such action be brought within 6 calendar months after the offence. And by s. 4. the said penalties may be recovered by information before a justice of peace of the county, &c. wherein the offence shall happen, upon proof by the oath of a witness, or confession of the party; and shall be levied by distress, &c. together with the costs of such distress, &c.; and such forfeitures shall be applied, one moiety to the informer, and the other to the poor of the parish: And such justice may order the offender to be detained in custody until return may be conveniently had to such warrant of distress, unless the party shall give security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him on the day of the return of such warrant, such day not exceeding 5 days from the time of taking such security. And if no sufficient distress can be had, such justice shall commit the offender to the common gaol or house of correction, to be kept to hard labour for any time not exceeding 6 nor less than 3 calendar months, unless the forfeiture and all costs and charges attending the prosecution be sooner paid. Provided (s. 5.) that no such offender shall be prosecuted both by action of law, and information before a justice of peace; or in such case he may plead the former prosecution pending, or the conviction or judgment thereon. And by s. 9. no person shall be proceeded against by information before a justice of peace, unless such information be made upon oath before a justice of peace for the county or place wherein such offence shall be committed, within 3 calendar months after the offence. By s. 6 & 7. the conviction shall be drawn in the form hereby prescribed, or in the like form; which conviction the justice shall cause to be written on parchment, and returned to the next quarter sessions for the county, to be filed and kept amongst the records: And the clerk of the peace shall, upon application, grant copies thereof upon payment of 1s. for every copy. By s. 8. a power is expressly given to justices of peace to administer oaths for the discovery and execution of the matters aforesaid. By s. 10. any person

s. 4.

Jurisdiction of justices in respect to such offences.

s. 5.

Proviso.

s. 9.

No person to be proceeded against unless information is made.

s. 6 & 7.

*Form of conviction.**Duty of clerk of the peace.*

s. 8.

Justices may administer oaths.

- s. 10. *Appeal to quarter sessions.* person may appeal to any quarter sessions held for the county, &c. wherein the cause of complaint shall arise, within 4 calendar months after such cause of complaint, such appellant giving 14 days notice in writing, of his intention to bring such appeal, and of the matter thereof, to the justice, and every other person against whom such complaint shall be made; and in 4 days after such notice, entering into a recognizance before a justice of peace of said county, &c. with a sufficient surety, conditioned to try such appeal, and abide the order of, and pay such costs as shall be awarded by the justices at such sessions; and every such justice and other person, having received notice of such appeal, shall return all proceedings had before them touching such appeal to the justices at such quarter sessions, on pain of forfeiting £5. for such neglect: And the justices upon proof of the notice given, and of the entering into such recognizance, shall determine the matter of such appeal, in a summary way, and award costs to either party, as they shall think proper, to be levied as the forfeitures aforesaid; and the determination of such quarter sessions shall be final; and none of the proceedings shall be quashed for want of form, nor removed by *certiorari* or other process into any of the courts at Westminster. By s. 12.
- Limitation of actions.* any suit against any person for any thing done in pursuance of this act, shall be commenced within 6 calendar months after the fact, and shall be laid in the county, &c. where the matter shall arise; and the defendant may plead either generally or specially; and shall recover treble costs of verdict, nonsuit, discontinuance, or judgment upon demurrer. By s. 11. this act shall not extend to Scotland. The clauses of the 9 Ann. c. 25. Eng. 13 Geo. 3. c. 80. Eng. and 39 & 40 Geo. 3. c. 50. Eng. which respect the offence of taking or killing this species of game in the night time, have been already stated, *ante* p. 773-838. For the better preserving the red and black game of grouse, commonly called "heath-cocks or heath-polts," the 4 & 5 W. & M. c. 23. s. 11. Eng. enacts, that no person on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall burn, between
- s. 11. *Not to extend to Scotland.*
- 4&5 W. & M. c. 23. s. 11. Eng.

tween 2nd February and 24th June, any grig, ling, heath, furze, goss, or fern, upon pain of being committed to the house of correction for any time not exceeding a month, nor less than 10 days, there to be whipped and kept to hard labour.

Persons burning cover for red and black game between 2d Feb. and 24th June, how punished.

The clause of the 1 Jac. 1. c. 27. Eng. which relates to the shooting at, killing, or destroying herons, (as well as other wild fowl) has been already stated, *ante* p. 847.

Penalty for shooting at, &c. herons.

By the 19 Hen. 7. c. 11. Eng. no person, without his own ground, shall slay, take, or cause to be taken, by

1 Jac. 1. c. 27. Eng.
19 Hen. 7. c. 11. Eng.

means of any craft or engine, any herons, unless it be with hawking, or with a long bow, on pain of 6s. 8d. for every heron. And no person, without his own ground,

Penalty for killing herons by craft or engine.

shall take any young herons out of the nest, without license of the owner of the ground, on pain of 10s. for every heron so taken: and every person may sue for said forfeitures by action of debt; and 2 justices of peace

Or taking young herons out of the nest.

in their sessions shall have authority to call before them any person suspected of the premises; and if the party be found in default, he shall be committed to prison till he have found surety for payment of the forfeitures, to the king: and those justices that examine them, shall have the tenth part of such forfeitures. And by the 25

25 Hen. 8. c. 11. Eng.

Hen. 8. c. 11. Eng. if any person from 1st March to 30 June, shall willingly take or destroy the eggs of any heron, he shall be imprisoned for a year, and forfeit for every egg, 8d. half to the king, and half to him that will sue by action of debt in any of the king's courts, wherein, &c.: And all justices of peace, within their limits, shall have power to inquire of such offences as in cases of trespass.

Penalty for taking, &c. the eggs of a heron.

And with respect to the eggs of wild fowl in general, the 25 Hen. 8. c. 11. Eng. *supra*, also enacts, that no person from the first day of March to the last day of June

Penalty for taking or destroying the eggs of any wild fowl.

yearly, shall willingly take or destroy the eggs of any kind of wild-fowl, from or in any place, where they shall be laid by such wild-fowl, on pain of imprisonment for a year, and to forfeit for every egg of a crane or bustard, 20d. of a bittour or shovelard, 8d. and of other wild-fowl, 1d.; half to the king, and half to him that will sue

25 Hen. 8. c. 11. s. 5. Eng.

Bustard, bittour or shovelard.

by

s. 6.

*Crows, &c.
excepted.**Special provision
as to licenses for
killing crows,
&c.*1 Jac. 1. c. 27.
s. 7. Eng.

by action of debt in any of the king's courts, wherein, &c.: And all justices of peace within their limits, shall have power to inquire of such offences. But by s. 6. this act shall not extend to persons that destroy crows, choughs, ravens, and bussards, or other fowl not used to be eaten.

By the 1 Jac. 1. c. 27. s. 7. Eng. it shall be lawful for every person keeping hawks, which at the quarter sessions shall be licensed to shoot hail-shot in hand-guns or birding pieces, at crow, chough, pie, rook, ring-dove, jay, or smaller birds, for hawk's-meat, to kill hawk's-meat according to the license only, so that such party at the same quarter sessions become bound to the king by recognizance in £20. not to shoot at any the fowl or game prohibited by this law; and so that he shall not shoot in any gun within 600 paces of any hernery, nor within 100 paces of a pigeon-house, nor in any park, forest, or chase, whereof the party so licensed, or his master, shall not be owner, keeper, or governor; for which license the clerk of the peace is to take only 12*d*.

*Penalties im-
posed by the
game laws to be
recovered wholly
by informer.*8 Geo. 1. c. 19.
Eng.26 Geo. 2. c. 2.
Eng.2 Geo. 3. c. 19.
s. 5. Eng.

For the better recovery of the penalties inflicted upon persons who destroy game; it is enacted by the 8 Geo. 1. c. 19. Eng. (as amended by the 26 Geo. 2. c. 2. Eng. and 2 Geo. 3. c. 19. s. 5. Eng.) that where any person shall, for any offence to be committed against any law now in being for the better preservation of the game, be liable to any pecuniary penalty upon conviction before a justice of peace; it shall be lawful for any person whatsoever to sue for the whole of such penalty for his own use, by action of debt, or on the case, bill, plaint, or information, in any court of record at Westminster, wherein no essoin, wager of law, or more than one imparlance shall be allowed; and wherein the plaintiff shall have double costs; and no part of said penalty shall be applied to the use of the poor of the parish. Provided that no such action, &c. shall be brought or exhibited, but within 6 months after the thing done for which the same shall be commenced.

*Limitation for
such actions.*

The provisions of the 39 & 40 Geo. 3. c. 50. G. B. *ante* p. 773. are of a general nature, and proper to be here referred to.

With

With respect to the qualification for killing game in Ireland: the 10 W. 3. c. 8. s. 2 & 10. Ir. (as amended by the 27 Geo. 3. c. 35. s. 8. Ir.) enacts, that no person not having an estate of freehold in his own or his wife's right, of the yearly value of £100. or a personal estate of the value of £1000. over and above all debts, shall have or keep any pointer, hound, beagle, grey-hound, or land-spaniel, setting-dog or bitch, [*other than such person as shall be licensed thereunto by the justices of peace of the county where he shall live, at the quarter sessions of the peace to be held for such county next after Christmas in every year, in order to the making and training up such dogs, and that under such regulations only as shall be specified in such license; and such person shall, every 2 years during the continuance of such license, train up, teach, and make some one hound to hunt on dry foot, and in default thereof, such license shall become of no effect from the granting the same; and the person to whom the same was granted, shall be liable to the same penalties as if he had acted without license.] And any hound, &c. kept contrary hereunto, may be seized by any justice of peace of the respective county where the same shall be so kept, or by any person authorized thereto by warrant of such justice, or by any person having a freehold of the yearly value of £40. within the county; which justice of peace and freeholder may detain the same to their own uses, or dispose of them as they shall think fit; and every person keeping such hound, &c. contrary hereunto, and being convict before a justice of peace of the county where such offence shall be committed, on the oath of a witness, shall forfeit £5, to be levied by warrant of such justice, by distress, &c. one moiety to the informer, the other to the poor of the parish where the offence shall be committed. And by s. 3. no person qualified to keep any such hound, &c. shall shelter or cover such hound, &c. for any person not qualified to keep the same; on pain of forfeiting £40. to be recovered by action of debt, &c. in any

Qualification for keeping dogs to kill game.

10 W. 3. c. 8. s. 2 & 10. Ir.

(27 Geo. 3. c. 35. s. 8. Ir.)

Dogs of unqualified persons may be seized.

Penalty on unqualified persons keeping or sheltering dogs.

s.

* It seems that the clause within the crotchets which by the 10 W. 3. c. 8. s. 10. Ir. related only to pointers and setting dogs, was meant to be extended by the 27 Geo. 3. c. 15. s. 8. Ir. to hounds, beagles, grey-hounds, or spaniels,

s. 9 & 20.

Provisoos.

s. 11.

Penalty on servants selling game without consent.

s. 15.

Lords of manors may appoint game-keepers.

s. 16.

Lords of manors and game-keepers may oppose offenders in the night.

s. 19.

any court of record in Dublin; one moiety to the king, the other to him that will sue. Provided (s. 9.) that nothing herein shall hinder any tenant to any person not restrained by this act, from keeping any hound, &c. for the use of his landlord, so as such tenant shall not hunt, course, or otherwise make use of such hound, &c. but in the company of his landlord. And by s. 20. nothing herein shall restrain any person within any manor from keeping hounds, &c. within the same, to hunt, course, set with, or otherwise use in such manor, so as the same be kept with the consent of the lord of the manor, appearing by license under his hand and seal. But by s. 11. no person keeping a gun to fowl with, as servant to any person not restrained by this act from keeping the same, shall sell or dispose of any fowl or game he shall kill, but shall bring such game to his master's house for the use of said master; on pain of forfeiting 20s. upon conviction before a justice of peace of the county where the offence shall be committed, by the oath of a witness; one moiety thereof to be to the use of the poor of the parish where the offence was committed, the other to him who shall give information and make proof thereof; the same to be levied by warrant of such justice. By s. 15. all lords of manors or other royalties, not under the degree of an esquire, may by writing under their hands and seals, authorize one game-keeper or more, within their manors, &c.; who may take and seize all such guns, hounds, grey-hounds, beagles, land-spaniels, or setting-dogs, as within the precincts of such manors are by this act prohibited to keep or use the same. And by s. 16. all lords of manors or other royalties, not under the degree of an esquire, or any person so authorized by them as aforesaid, shall and may, within their respective manors, &c. oppose such offenders in killing or destroying game contrary to this act, in the night-time, and be equally indemnified for so doing, as if such fact had been committed within any ancient chase, park, or warren. By s. 19. if any inferior tradesman, apprentice, or other dissolute person, shall hunt, hawk, [fish,] or fowl, unless in company with the master of such apprentice duly qualified by law, he shall be liable to the same penalties

nalties as persons on whom game shall be found are by s. 14*.; and may be also sued for his wilful trespass in coming on any person's land; and if found guilty thereof, the plaintiff shall not only recover his damages, but his full costs of suit. By s. 12. no non-commissioned officer or private soldier shall be permitted to go out of his garrison or other quarters with any gun or fire-arms, (unless the same be on a march, or a commanded party, by command of the officer in chief then present and commanding in such garrison, &c.) on pain of forfeiting 5s. upon conviction before a justice of peace for the county where such offence shall be committed; to be paid to such person as shall give information of and make out such offence, and to be levied by distress, &c. on the warrant of such justice; and if no sufficient distress, such offender shall, by warrant of such justice, be sent to the common gaol for such county for 10 days. And the officer in chief of such garrison or quarters to which such offender shall belong, shall, on demand, render the body of the offender to the justice of peace or chief magistrate to be dealt with according to law: and in case such officer shall not deliver up such offender, such officer, being thereof convict before a justice of peace of the county where such garrison, &c. shall be, shall forfeit £5. to be levied, on the warrant of such justice, by distress, &c. one moiety thereof to be to the poor of the parish where such offence shall be committed, the other to him that shall inform of and make out such offence. And by s. 13. no commissioned officer of any regiment, troop, or company, or any person employed by him, shall shoot, or course with grey-hounds, any deer, hare, or other game, except on his own ground, or by the leave of the owner of the soil; on pain of forfeiting £5. which offence shall be determined before a justice for the county where the same shall be committed, and the said penalty distributed, one moiety to the poor of the parish where the offence shall be committed, and the other to the person who shall give information, and make proof thereof, to be levied by warrant of such justice.

Penalty for tradesmen or apprentices killing game.

s. 12.

Penalty for non-commissioned officers and soldiers going out with fire-arms, except when on duty.

s. 13.

Penalty on commissioned officers killing or pursuing game.

* The clause referred to is repealed by 27 Geo. 3. c. 15. s. 2. 1r. which substitutes other provisions *vide* p. 860-1.

6 Ann. c. 14.
s. 10. Ir.

Officers and soldiers prohibited from killing game.

Penalties.

27 Geo. 3. c. 31.
s. 23 & 25. Ir.

Revenue officers in certain cases prohibited to kill game.

27 Geo. 3. c. 35.
s. 6. Ir.

Penalty on higglers, &c. having, buying, or selling game.

† not printed.

s. 7.

Penalty on poulterers, &c. in whose possession game found.

s. 9.

Penalty on higglers, &c. in whose possession game found.

justice. And the 6 Ann. c. 14. s. 10. Ir. further enacts, that if any officer or soldier shall, without leave of the lord of the manor under his hand and seal, take, kill, or destroy any hare, coney, partridge, pheasant, pigeon, or other sort of fowl or poultry; or if any officer or soldier shall destroy [any fish, or] her majesty's game, and shall be convicted on the oath of a witness, before a justice of peace, he shall forfeit £5. to the poor of the place where the offence shall be committed; and every officer commanding in chief upon the place, for every offence of which such soldier under his command shall be convicted, shall forfeit [*10s.] to be distributed as aforesaid; and if upon such conviction, and demand made of such penalties by the constable, or overseer of the poor of the parish where the offence shall be committed, such officer shall refuse, or for [†10 days] neglect to pay the said penalties, he shall forfeit his commission. It is a provision of the 27 Geo. 3. c. 31. Ir. that if any officer of the revenue entering into any head lands or high grounds in pursuance of this act, to look out for ships, &c. shall take with him any dog, or destroy any game thereon, he shall, on conviction by the oath of a witness, before a justice of peace, forfeit £5. to be levied by distress, &c. by warrant of such justice. The following clauses of the 27 Geo. 3. c. 35. Ir. may be here also stated. By s. 6. if any higler, chapman, carrier, victualler, or ale-house keeper, shall have in his custody or possession any hare, pheasant, partridge, moor-[†game,] heath-game, grouse, land-rail or quail, or shall buy, sell, or offer to sell, any hare, &c. such higler, &c. (unless such game in the hands of such carrier be sent up by a person qualified to kill game,) shall, upon conviction before a justice of peace, forfeit £5.: And by s. 7. if any hare, &c. shall be found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry-cook, the same shall be deemed to be an exposing to sale, and the offender on conviction thereof before a justice of peace, shall forfeit £5. And by s. 9. every higler, cleever, carrier, stage-coachman, or chapman, in whose possession

* 20s. by the last Mutiny Act, 48 Geo. 3. c. 15. U. K.

† 2 days by the 48 Geo. 3. c. 15. s. 70. U. K.

possession any hare, &c. shall be found; and every person not being qualified to take or kill game, who shall sell or expose to sale, or who shall have in his possession any hare, &c. and shall not prove to the satisfaction of a justice of peace for the county, &c. where the offence shall be committed, or where the offender shall be found, before whom he shall be brought, that he came fairly and honestly by the same, and bought or received the same from some person qualified to take or kill game, shall forfeit for every such hare, &c. a sum not exceeding £5.; and it shall be lawful for any person being thereunto authorized by warrant of a justice of peace within his jurisdiction, to search the houses, out-houses, or other places of any higler, &c. not qualified to take or kill game, who shall be suspected, (upon sufficient ground) to have in his custody, any hare, &c.; and it shall be lawful for any justice of peace within his jurisdiction, to take and seize any hare, &c. which he shall find in the possession of any person not qualified to take or kill game: and every person in whose possession such game shall be found, if he shall not prove to the satisfaction of such justice, that he came fairly and honestly by the same, and bought or received the same from some person qualified to take or kill game, shall forfeit for every hare, &c. a sum not exceeding £5. By s. 10. no person, not being duly authorized, shall go or enter upon the land of any other person to look for, set, spring, start, follow, shoot, course, hunt, hawk, or otherwise pursue, take, or destroy, any sort of game, wood-cock, snipe, duck, teal, or widgeon, on pain of forfeiting a sum not exceeding £10. Provided (s. 11.) that no person shall be construed to be looking for game, unless he shall be provided with a dog, gun, net, or other implement for taking or destroying game. And by s. 12. nothing herein shall subject any person duly qualified to take or kill game, his servants or necessary attendants, to any of the penalties hereby inflicted for following their four-footed game into the lands of other persons. Provided (s. 13.) that such other persons may have redress by law against the persons so following their game, for any damage done to them. By

*Houses, &c. may
be searched.*

s. 10.

*Penalty for pur-
suing, &c. game
on another
man's land.*

s. 11.

*What shall be
deemed looking
for game.*

s. 12.

Proviso.

s. 13.

Proviso.

s. 16.

- s. 16. *Dogs of unqualified persons may be ordered by justices to be killed.* s. 16. where any dog of any species, belonging to any person not qualified or authorized to keep setting-dogs or hounds, shall be known to destroy any game, [or to kill or wound sheep, or bite horses to the annoyance of travellers, or which in any other respect shall prove a nuisance,] on information thereof given upon the oath of a witness, before a justice of peace for the county, &c. where such dog shall be, it shall be lawful for such justice to summon the owner to appear before him, and after a full inquiry to issue his warrant for destroying such dog, in case he shall see sufficient cause. Provided (s. 17.) that nothing herein shall prevent any person from obtaining such further redress for any damage which he shall sustain by such dog, as he may be entitled to by the laws now in force. And this act provides (s. 18.) that nothing herein shall affect the rights of lords of manors.
- s. 17. *And owners of dogs liable to damages.*
- s. 18. *Proviso.*

Penalty for killing deer.
10 W. 3. c. 8.
s. 5. Ir.

For the protection of deer in particular, the 10 W. 3. c. 8. s. 5. Ir. enacts, that no person shall shoot any deer at any season of the year, except on his own ground, or on the ground of such person to whom the person shooting the deer (*being a protestant) shall be a menial family servant at the time of shooting the same, and that by warrant only under the hand of such master, on pain of forfeiting £5. being convict before a justice of peace of the county where such offence shall be committed, on the oath of a witness; one moiety thereof to the poor of the parish, and the other to him who shall give information and make proof of such offence; to be levied on the goods of such offender, by warrant of such justice. And by s. 6. no person shall hunt, course, or kill any male deer before the 10th June in any year, unless it be in the park or proper ground of the person hunting, &c. the same; nor shall course, &c. any male fallow deer after Michaelmas in any year, unless in the proper ground of the person hunting, &c.; on pain of forfeiting £5. for every such offence, to be determined by a justice of peace as aforesaid, and the forfeiture to be

Killing deer at certain seasons of the year prohibited.

Penalty.

† *Vide ante* p. 571 5. and vol. 1. p. 503.

be levied and divided as in s. 5. *supra*. And by s. 7. (as s. 7.
amended by the 27 Geo. 3. c. 35. s. 3. Ir.) no person (27 Geo. 3. c. 35. s. 3. Ir.)
shall burn on any mountain, hill, moor, bog, heath, or
waste ground, any grig, ling, furze, heath, goss, or fern, Penalty for de-
stroying covert
for deer.
save only between 14th June and 2nd February, on pain
of forfeiting £5. such offence to be determined, and
such forfeiture levied and distributed, as in s. 5. *supra* :
But nothing herein shall subject the owner or occupier
of such mountain, &c. to such penalty for burning grig,
ling, &c. at any time of the year on such mountain,
&c. as shall be broken up for the purposes of agri-
culture or planting. The 7 Geo. 2. c. 8. Ir. further 7 Geo. 2. c. 8.
s. 1. Ir.
enacts, that if any person shall unlawfully chase, kill,
kill, wound, maim, or take any red or fallow deer in any Penalty for kil-
ling red or fallow
deer.
park, paddock, or enclosed ground, where deer are
usually kept, without the consent of the owner, or person
chiefly entrusted with the custody thereof, and shall be
convicted on an indictment for the same, at the assizes
for the county where such offence shall be committed,
or such offender apprehended, (or at the quarter sessions
for the county or county of the city of Dublin, in case
such offence be committed, or the offender apprehended,
in the county or county of the city of Dublin;) such of-
fender shall forfeit a sum not exceeding £30. nor under
£10. for each deer so chased, &c. to be ascertained and
imposed by such court; one moiety to him who shall
give information and prosecute, and the other to the
owner of the deer; the same to be levied on the goods
of such offender, by order of the judge of assize, or such
justices before whom the same shall be tried; and such
offender shall be committed to the common gaol of such
county for 12 months. Provided (s. 2.) that if the per-
son so convicted shall not pay the said fine within 3 ca-
lendar months after such conviction, and shall not have s. 2.
effects sufficient on which said fine can be levied, then Offenders how
punished in de-
fault of paying
penalty.
the judge or judges before whom he shall be convicted,
shall transport such offender for any time not exceeding
7 years; and if he shall return before the expiration of
the term, he shall be guilty of felony without benefit of
clergy. And by s. 3. every person who shall aid, assist,
s. 3.
or

Penalty for killing, &c. any other species of deer.

What shall be evidence of killing deer.

s. 4.

Limitation.

Penalty for killing, &c. hares or rabbits.

10 W. 3. c. 8.
s. 8. Ir.

27 Geo. 3. c. 35.
s. 4. Ir.

At what times killing hares, &c. unlawful.

or employ any person unlawfully to chase, &c. any deer, without the consent of the owner, being convicted as aforesaid, shall incur the like pains and penalties as the person who shall unlawfully chase, &c. any red or fallow deer as aforesaid; and in case any venison or deer-skin shall be found in the possession of any person, and there is good ground to suspect that the same has been stolen, with the privity of the person in whose custody such venison, &c. is found; and if such person do not give a satisfactory account how he came by such venison, &c. he shall, without further evidence, be convicted of unlawfully killing and taking deer within this act. Provided (s. 4.) that every prosecution on this act be brought within 6 calendar months after the offence.

Next as to hares and rabbits: By the 10 W. 3. c. 8. s. 8. Ir. no person, (not having a freehold estate of £40. *per ann.* or personal estate to the value of £1000.) shall shoot at, kill, take, or destroy any hare, on pain of forfeiting 10s. upon conviction before a justice of peace of the county where the offence shall be committed, or the offender apprehended; one moiety to the use of the poor of the parish where the offence shall be committed, to be paid to the church-wardens, the other to him who shall inform and prosecute for the same; [*or to be publicly whipped at the discretion of the justice before whom he shall be convict.] And by the 27 Geo. 3. c. 35. s. 4. Ir. every person who shall buy, or cause to be bought, sell, or expose to sale, any hare between the first Monday in November, and the first Monday in July following, shall forfeit a sum not exceeding £5. for every such hare; and every person who shall make use of any gun, snare, net, or other engine to take, kill, or destroy any hare or rabbit on a Sunday, shall forfeit a sum not exceeding £5.; and every person who shall wilfully take

* This clause within the crotchets seems to be referred to by the 27 Geo. 3. c. 35. s. 22. Ir. which enacts, that it shall not be lawful for any justice of peace before whom any person shall be convicted in a summary way, for any offence committed against any laws now in force for the preservation of the game, to order whipping or other corporal punishment.

take, kill, or destroy any hare in the night, between one hour after sun-setting, and one hour after sun-rising, unless qualified to take or kill game, and upon his own lands, or duly authorized so to do, shall forfeit a sum not exceeding £5. for every such hare; and every person who shall trace any hare, or other game, in the snow, unless qualified to take or kill game, and upon his own lands, shall forfeit a sum not exceeding £5. And by s. 5. every person who shall use any dog, gun, snare, net, or other engine, or who shall set or fix any snare, net, or engine, to take, kill, or destroy any hare or rabbit, in the night, unless qualified to take or kill game, and upon his own land, or duly authorized so to do, shall, being convicted upon indictment at the general sessions for the county, &c. where such offence shall be committed, forfeit £10. and suffer such other punishment, by imprisonment or whipping, as the justices shall direct.

*Penalty.**Penalty for tracing hares in the snow.**s. 5.**Penalty for killing, &c. hares in the night.*

With respect to the winged game: The 10 W. 3. c. 8. Ir. enacts, that no person shall destroy the eggs or nest of any partridge, pheasant, grouse, quail, duck, or other wild fowl; nor shall any person, not having a freehold estate of £40. *per ann.* or personal estate to the value of £1000. shoot at, kill, take, or destroy any partridge, pheasant, grouse, or quail; nor any person whatsoever shoot at, take, kill, or destroy any house-dove or pigeon, other than such as shall be in or belonging unto the dove-house, or pigeon-house of the person so shooting at, &c. the same; on pain of forfeiting 10s. for every such offence, being convict before a justice of peace of the county where the offence shall be committed, or the party apprehended; one moiety to the poor of the parish where such offence shall be committed, to be paid to the church-wardens; the other to him who shall inform and prosecute for the same.* And the 27 Geo. 3. c. 35. s. 4. Ir. (as amended by the 37 Geo. 3. c. 21. Ir.) enacts, that no person shall on any pretence take, kill, destroy, carry, sell, buy, or have in his possession or use, any moor-game, heath-game or grouse, between 10 December and 20 August, or any partridge, land-rail,

*Penalty for killing, &c. or destroying the eggs of partridges, and other wing'd game.**10 W. 3. c. 8. s. 8. Ir.*** Vide note to p. 846.**27 Geo. 3. c. 35. s. 4. Ir.**(37 Geo. 3. c. 21. Ir.)**At what seasons unlawful to kill grouse, &c. partridges, &c.*

rail, or quail, between 10 January and 20 September; nor shall any person wilfully take, kill, or destroy, or sell or expose to sale, or buy or cause to be bought, any pheasant or wild turkey, between 10 January and 1 September; on pain of forfeiting a sum not exceeding

Penalty.

£5. for every moor-game, heath-game or grouse, pheasant, partridge, quail, land-rail, or wild turkey: And every person who shall make use of any gun, snare, net, or other engine, to take, kill, or destroy any moor-game, &c. or other wild fowl, on a Sunday, shall forfeit for every such offence a sum not exceeding £5.

Penalty for killing wild fowl on a Sunday.

Penalty for killing pheasants, &c. in the night.

And every person who shall wilfully take, kill, or destroy any pheasant, partridge, quail, land-rail, moor-game, heath-game, or grouse, in the night, between one hour after sun-setting and one hour before sun-rising, unless qualified to take or kill game, and upon his own lands, or duly authorized so to do, shall forfeit a sum not exceeding £5. for every pheasant, &c. so taken, &c:

Penalty for tracing game in the snow.

And every person who shall trace any game in the snow unless qualified to take or kill game, and upon his own lands, shall, for every such offence, forfeit a sum not exceeding £5. And every person who shall wilfully

Penalty for destroying the eggs of pheasants, &c.

destroy the eggs or nest of any pheasant, partridge, quail, land-rail, moor-game, heath-game, or grouse, wild duck, widgeon, plover, or snipe, shall forfeit for every such offence, a sum not exceeding £5. And by

s. 5.

Penalty for using dogs, guns, &c. to kill pheasants, &c. in the night.

every person who shall use any dog, gun, snare, net, or other engine, or who shall set or fix any snare, net, or other engine, to take, kill, or destroy any pheasant, partridge, quail, land-rail, moor-game, heath-game, or grouse, snipe, or wood-cock, in the night, unless qualified to take or kill game, and upon his own land, or duly authorized so to do, shall, for every such offence, being convicted upon an indictment at the general sessions for the county, &c. where such offence shall be committed, forfeit £10. and suffer such other punishment, by imprisonment or whipping, as the justices shall direct.

Penalties of the 10 W. 3. c. 8. Ir. now enforced.

The following provisions of the 10 W. 3. c. 8. Ir. and 27 Geo. 3. c. 35. Ir. are of a general nature. To the end

and that no person convicted of any of the offences in the 10 W. 3. c. 8. may escape punishment by flight or other removal, this statute enacts (s. 17.) that it shall be lawful, after such conviction, to the constable, or other officer or person prosecuting, to detain in custody such offender (in case he shall not presently pay the money due by such conviction) during such reasonable time as a return may be conveniently had to the warrant for distress upon such conviction, so as such detainer do not exceed 2 days : Provided that where any offender shall be punished by this act, he shall not be prosecuted upon any other law for the same offence. By s. 18. any person sued by reason of any thing which he shall do in pursuance of this act, may plead the general issue, &c. ; and shall have treble cost of verdict, nonsuit, or discontinuance. And by the 27 Geo. 3. c. 35. s. 19. Ir. all offences not herein otherwise provided for, shall and may be inquired into and determined by the oath of a witness, or confession of the party, before a justice of peace for the county, &c. where the offence shall be committed ; and such justice may issue his warrant for distress and sale of the goods of the offender, in order to raise the penalty, and in case no sufficient distress shall be found, such offender shall, by warrant of such justice, be committed to the house of industry or house of correction, there to be kept to hard labour, or to the gaol of such county, &c. for any time not exceeding a calendar month, or until such fine shall be paid. Provided (s. 20.) that such prosecution shall be commenced within 6 calendar months after the offence. By s. 21. all forfeitures to be incurred for any offence against the game laws, shall be paid one half to the informer or prosecutor, and the other half to the use of the county infirmary or house of industry, first deducting a sum after the rate of 2s. for every 20s. which shall be paid to the constable for his trouble in executing the warrant of such justice, if such justice think fit. And by s. 23. any person aggrieved by any thing done in pursuance of the laws relative to the game, by any justice of peace, may appeal to the next general sessions for the county where

s. 17.

s. 18.

Persons enforcing this law, protected against actions.

27 Geo. 3. c. 35. s. 19. Ir.

Offences not otherwise provided for by this act, how punished.

s. 20.

Limitation for prosecutions.

s. 21.

Penalties for offences against the game laws, how applied.

s. 23.

Appeal lies from judgments of justices to sessions.

where the cause of complaint shall arise, who shall determine the same, and, if need be, cause to be impanelled a jury to try the fact which may arise upon such complaint, and award such costs to the party appealed against, as said justices shall think just; such person appealing having first entered into a recognizance before a justice of peace for said county, with 2 sureties, conditioned to try such appeal, and abide the order of, and pay such costs as shall be awarded by said justices; and the determination of said justices shall be final; and no order made concerning any proceedings or convictions relative to the game, shall be quashed for want of form, or be removed by *certiorari*, or other writ or process, into the king's bench in Dublin. By s. 24. any person sued for any thing done in pursuance of this act, may plead the general issue, &c.

s. 24.

Persons enforcing this act, if sued, may plead the general issue.

Reward for taking or killing animals that destroy game.

27 Geo. 5. c. 35.
s. 14. Ir.

And, lastly, it is a provision of the 27 Geo. 3. c. 35. s. 14. Ir. that any person who shall take, kill, or destroy otters, martins, weasels, rats, cormorants, kites, scald-crows, or magpies, shall receive for every otter or martin 5s. for every weasel 1s. for every cormorant or kite 6d. for every scald-crow or magpie 3d. and for every rat 1d.; which sums (proof being made by producing to the grand jury of the county, &c. in which such vermin was taken, &c. an affidavit sworn before 2 justices of peace for such county in a form hereby prescribed,) every grand jury, at the general assizes, shall present to be levied in the usual manner on the county, and paid to the persons entitled to the same; which sums shall be in lieu of all rewards now payable by law for destroying vermin. Provided (s. 15.) that a certificate annexed to such affidavit, signed by such 2 justices, shall be produced to such grand jury in a form hereby prescribed.

s. 15.

Proviso.

§ 12.

Trespassers in fish-ponds, how punished.

3 Edw. 1. c. 20.
E. & I.

37 Hen. 8. c. 6.
Eng.

9 Geo. 1. c. 22.
s. 1. Eng.

XII. The statutes for the preservation of *fish* are next in order. The 3 Edw. 1. c. 20. E. & I. which relates to trespassers in ponds, as well as in parks, has been already stated *ante* p. 827. and the clause of the 9 Geo. 1. c. 22. Eng. *ante* p. 624. which respects the offence of unlawfully and maliciously breaking down the head or mound of any fish-pond, &c. is to be here also referred

to:

to: And this clause of the Black Act having made such offence a capital felony, seems therefore to have superseded the clause of the 37 Hen. 8. c. 6. Eng. which enacts, that if any person *maliciously*, wilfully, and unlawfully cut, or cause to be cut out, the head or dam of any pond, pool, moat, stew, or other several water, or the head or pipe of any conduit of any other person, he shall not only forfeit to the party grieved treble damages to be recovered by action of trespass, but shall also forfeit £10. to the king. And the 5 Eliz. c. 21. s. 2. Eng. (which has been already in part stated *ante* p. 845.) further enacts, that if any person shall unlawfully, without authority, break, cut down, cut out, or destroy any head or dam of any ponds, pools, moats, stagnes, stews, or several pits, wherein fish are or shall be put in or stored by the owners or possessioners thereof; [*or shall wrongfully fish in such ponds, &c. to the intent to destroy, kill, take, or steal away any of the same fish, against the will of such owner, &c. not having lawful title or authority so to do;] and be thereof convicted at the suit of the crown, or the party grieved, he shall suffer imprisonment for 3 months, and pay the party grieved treble damages; and after the said 3 months expired, shall find sureties for his good abearing for 7 years after, or else remain in prison till such sureties be found for the said 7 years. And the 22 & 23 Car. 2. c. 25. s. 7. Eng. recites, that divers idle, disorderly, and mean persons, betake themselves to the stealing, taking, and killing of fish out of ponds, pools, moats, stews, and other several waters and rivers, to the great damage of the owners; and therefore enacts, that if any person shall use any net, angle, hair, noose, troll, or spear; or shall lay any wears, pots, nets, fish-hooks, or other engines; or shall take any fish by any means

Malicious mischief to fish-ponds how punished.

5 Eliz. c. 21. s. 2. Eng.

Punishment for unlawfully breaking, &c. dams of ponds, &c.

Or for fishing in the ponds, &c. of others.

22 & 23 Car. 2. c. 25. s. 7. Eng.

Penalty for using nets, &c. to take fish in ponds, &c. of others.

* It was also enacted by the 31 Hen. 8. c. 2. s. 2. Eng. that if any evil disposed person do fish in the day-time, from 6 in the morning till 6 in the evening, in any several pond, stew, or moat, with nets, hooks, or baits, against the will of the owner, not having colour of title so to do, and thereof be convicted at the suit of the king, or of the party grieved, he shall suffer imprisonment for 3 months, and find surety for his good abearing.

means or device in any pond, &c. or be aiding thereunto, without the license or consent of the lord or owner of said water, and be thereof convicted by confession, or the oath of a witness, before a justice of peace of the county where such offence shall be committed; every such offender in stealing, taking, or killing fish, shall give to the party injured such recompense, and in such time, as the justice shall appoint, not exceeding treble damages; and moreover shall pay down to the overseers for the use of the poor where said offence shall be committed, such sum not exceeding 10s. as the justice shall think meet; and in default of payment as aforesaid, the same to be levied by distress, &c. and for want of distress he shall be committed to the house of correction for such time as such justice shall think fit, not exceeding a month, unless he enter into a bond with one surety to the party injured, not exceeding £10. never to offend in like manner. And by s. 8. it shall be lawful for the justice before whom such offender shall be convict, to take, cut in pieces, and destroy every net, &c. or other engine wherewith such offender shall be apprehended. By s. 9. persons aggrieved may appeal to the next quarter-sessions, whose judgment shall be final, if no title to any land, royalty, or fishery, be therein concerned. And by the 4 & 5 W. & M. c. 23. s. 5. Eng. no person shall have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, and other than the owner and occupier of any river or fishery; and such owner or occupier, and every other person by him appointed, may seize, and keep to his own use, every net, &c. which he shall find used or laid, or in the possession of any person fishing in any river or fishery without the consent of the owner or occupier thereof: And also any person authorized by warrant of any justice of peace of the same county, &c. may, in the day-time, search the houses, out-houses, and other places of any person hereby prohibited to have or keep the same, who shall be suspected to have or keep in his custody or possession any net, &c. or other engine aforesaid, and seize and keep the same

s. 8.

*The justice may
destroy such
nets, &c.*

s. 9.

*Appeal to ses-
sions.*

*4 & 5 W. & M.
c. 23. s. 5. Eng.*

*The nets, &c.
of persons not
being owners or
occupiers of fish-
eries, may be
seized.*

to his use, or cut or destroy the same, as things by this act prohibited to be kept by persons of their degree.

But by s. 6. this act shall not abridge any fisherman, or his apprentice, lawfully authorized to fish in navigable rivers or waters with lawful nets and engines.* And the

s. 6.

Proviso.

5 Geo. 3. c. 14. Eng. further enacts, that if any person shall enter into any park or paddock fenced in and en-

5 Geo. 3. c. 14.
s. 1. Eng.

closed, or into any garden, orchard, or yard adjoining or belonging to any dwelling-house, in or through which

*Persons enter-
ing parks, &c.
and stealing,
&c. fish kept in
rivers, ponds,
&c. how pun-
ished.*

park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other

water; and by any ways, means, or device, shall steal, take, kill, or destroy any fish, bred, kept, or preserved

in such river, &c. without the consent of the owner thereof; or shall be aiding or assisting in stealing, &c.

such fish; or shall receive or buy any such fish, knowing the same to be so stolen or taken as aforesaid; and

being thereof indicted within 6 calendar months after the offence, before any judge or justice of gaol delivery

for the county where such park, &c. shall be, by verdict or confession, convicted of such offence, he shall be

transported for 7 years. And by s. 2. in case any such offender shall surrender himself to a justice of peace for

s. 2.

the county where such offence shall have been committed; or being apprehended or in custody for such offence, or

*Encouragement
to make dis-
covery of accom-
plices.*

on any other account, and shall make a full confession thereof, and a true discovery, on oath, of his accomplice,

so as such accomplice may be apprehended, and shall on trial give evidence so as to convict such accomplice,

he shall be discharged of the offence so by him confessed. And by s. 3. if any person shall take, kill, or de-

s. 3.

stroy, (or attempt, &c.) any fish in any river or stream, pond, pool, or other water, (not being in any park or

*Penalty for tak-
ing, &c. fish in
rivers, &c. not
being in parks,
&c.*

paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling house, but in any other

enclosed ground being private property,) he shall, being convicted

* The other clauses of the 4 & 5 W. & M. c. 23. have been already stated, *ante* p. 822—3—4. and are to be here referred to.

convicted by the oath of a witness, forfeit £5. to the owner of the fishery of such river, &c.; and it shall be lawful for any justice of peace of the county, &c. where such last-mentioned offence shall be committed, on complaint upon oath, to issue his warrant to bring the person so complained of before him; and if he shall be convicted before such justice, or any other justice of the same county, &c. by the oath of a witness, or by confession, he shall, immediately after conviction, pay the said £5. to such justice for the use of such person as the same is hereby appointed to be paid unto; and, in default thereof, shall be committed by such justice to the house of correction for any time not exceeding 6 months, unless the forfeiture shall be sooner paid. But by s. 4. the owner of such fishery may sue for the said sum of £5. by action of debt, &c. in any court of record at Westminster, within 6 calendar months after such offence. Provided (s. 5.) that this act shall not subject any person to the penalties thereof, who shall fish, take, or kill, and carry away any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill, or carry away such fish.

s. 4.

Penalty how recovered.

s. 5.

Proviso.

Penalty for taking salmon in public rivers at improper seasons
13 Edw. 1. st. 1. c. 47. E. & I.

Next with respect to public rivers, and for preserving the breed of fish therein: By the 13 Edw. 1. st. 1. c. 47. E. & I. the waters of Humber, Ouze, Trent, Done, Aire, Darwent, Wharfe, Nid, Yore, Swale, Tese, Tine, Eden, and all other waters wherein salmon be taken, shall be in defence for taking salmons from the Nativity of our Lady, unto St. Martin's day; and the young salmons shall not be taken by nets, nor other engines, at mill-pools, from the midst of April unto the Nativity of St. John the Baptist; and in places where such rivers be, there shall be assigned overseers of this statute, which being sworn shall often inquire of the offenders; and for the first trespass they shall be punished by burning of their nets and engines; and for the 2nd they shall have imprisonment for a quarter of a year; and for the 3rd they shall be imprisoned a year; and as the trespass increaseth so shall the punishment. And the 13 Ric. 2. st. 1.

st. 1. c. 19. E. & I. recites the 13 Edw. 1. *supra*, and enacts, that young salmon shall not be taken during said time, at mill-dams, nor in other places, upon the same pain. And none shall put in the Thames, Humber, Ouze, Trent, or other waters, any nets called stalkers, nor other nets or engines, by which the fry or the breed of the salmons, lampreys or other fish, may be taken or destroyed, upon the pain in the 13 Edw. 1. *supra*.^{*} And these statutes are confirmed by the 17 Ric. 2. c. 9. E. & I. which enacts, that the justices of peace of all counties, shall be conservators of the 13 Edw. 1. st. 1. c. 47. and 13 Ric. 2. st. 1. c. 19. *supra*; and they shall survey all the wears in such rivers, that they be not too strait, for the destruction of fry, but of a reasonable wideness after the old assize used. And the justices which shall find default against the statutes, shall make due punishment; and shall put under-conservators under them, which shall be sworn to like surveying and punishment without any favour thereof to be shewed. And the same justices in their sessions shall inquire, as well of their office, as at the information of the under-conservators, of all trespasses and defaults against any of the points aforesaid, and shall cause them which be thereof indicted to come before them; and if they be convict they shall have imprisonment, and make fine after the discretion of the justices: And if the same be at the information of any of the under-conservators, they shall have half the fine. The 2 Hen. 6. c. 15. E. & I. further enacts, that the standing of nets and engines called trynks, and all other nets fastened, day and night, to posts, boats, and anchors, over the Thames and other rivers, shall be wholly † prevented; and every person that so setteth them, shall forfeit to the king, 100s. Provided that it shall be lawful to the possessors of trynks, if they be of assize, to fish with them in all seasonable times, drawing them by hand as other nets, saving to every of the king's people their right in their fisheries.

By

13 Ric. 2. st. 1.
c. 19 E. & I.

Penalty for taking young salmon in mill-dams, &c.

Penalty for using nets, &c. to take the fry of fish.

17 Ric. 2. c. 9.
E. & I.

Justices of peace to be conservators of rivers.

2 Hen. 6. c. 15.
E. & I.

Penalty for using standing nets, &c. on public rivers.

† "defendus."

* Special provisions are made by the 13 Ric. 2. and other statutes, as to the seasons for taking salmon and other fish in particular rivers.

1 Eliz. c. 17.
s. 1. Eng.

*Penalty for de-
stroying the
young brood,
&c. of any fish.*

s. 2.

*What shall be
deemed young
brood.*

s. 3.

*Size prescribed
for nets.*

s. 4.

*Proviso as to
nets for taking
smelts, &c.*

s. 5.

*Penalty for
using other nets.*

s. 6.

*Offences how
inquirable.*

s. 7.

*Penalties how
applied.*

s. 8 & 9.

Inquiry in leets.

s. 10.

By the 1 Eliz. c. 17. Eng. no person shall kill any young brood, spawn, or fry of any fish, in any flood-gate, pipe, tail of mill, wear, or in any straits, streams, brooks, rivers fresh or salt; nor take and kill any salmons or trouts not being in season, being kepper or shedder. And by s. 2. no person shall take and kill any pike or pikerel not being in length 10 inches, nor any salmon not being in length 16 inches, nor any trout not being in length 8 inches, nor any barbel not being in length 12 inches. And by s. 3. no person shall fish, or take fish by any device, but only with net or trammel whereof every mesh or mask shall be $2\frac{1}{2}$ inches broad, angling excepted. But by s. 4. in all places where smelts, loches, minnies, bulheads, gudgeons, or eels, have been used to be taken, it shall be lawful only for the taking of smelts, &c. to use such nets, engines, and devices, as heretofore; so that such person do not take, &c. other fish with such nets, &c. By s. 5. if any person offend contrary to the points aforesaid, he shall forfeit [*20s.] and the fish so taken, and also the unlawful nets, &c. By s. 6. the lord admiral, and all persons, &c. which have conservation of rivers or waters, shall have power to inquire of all offences committed contrary to this act, by the oaths of 12 men, or more. And by s. 7. all forfeitures by reason of such conviction shall be to the use of the persons (being no body corporate, nor head of any body corporate) before whom such conviction shall be; and to the use of such bodies corporate as have had any forfeitures for any offences committed in their conservancies, upon conviction had before the head of such body corporate. By s. 8. the lord of every leet shall have power to inquire of offences contrary to this statute. By s. 9. upon presentment in any leet by the oath of 12 men, or more, of any offences contrary to this statute, all forfeitures above limited shall be to the lord of the leet, and shall be levied as amercements for affrays committed within such leet. By s. 10. if the steward of the leet do not charge the jury to inquire

* In some editions of the statutes £20. is the penalty.

quire of offences done within the leet, contrary to this statute, the steward shall forfeit 40s. one moiety to the crown, the other to him who shall sue for the same.

Penalty for default of stewards and juries in leets.

And if any jury charged to inquire of offences committed within the precinct of the leet, do wilfully conceal and make default in presentment, it shall be lawful to the steward or bailiff of the leet, or his deputy, to impanel another jury within said leet, and inquire of such concealment, &c.; and upon every such default, &c. found and presented, every of the jurors shall forfeit 20s. to the lord of the leet, to be levied as aforesaid. By

s. 11. if the offences touching the destroying of fish or spawn, be not presented at the leet within one year after the offence, the justices of peace in their sessions, justices of *oyer and terminer*, and justices of assize, shall have power to inquire thereof, and to determine all offences contrary to this statute. Saving (s. 12.) to all persons, &c. their rights of conservation, inquiry, and punishment of the offences aforesaid. It is also a provision of the 33 Geo. 2. c. 27. s. 13. Eng. that no person shall take, kill, or destroy, or knowingly have in his possession, either on the water or on the shore, or shall bring to shore, or sell or expose to sale, or exchange for any goods, any spawn, fry, or brood of fish, or any unsizable fish, or any fish out of season, or any smelt which shall not be 5 inches in length; and any person may seize the same, together with all baskets and package in which the same shall be, and charge a constable or other peace officer with such offender; and every seizure as aforesaid shall be also delivered to such constable, &c. and such constable, &c. shall deliver such offender and such spawn, &c. before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20s. By s. 15. all forfeitures shall be levied by distress, &c. together with the costs of such distress, &c.; and one moiety shall go to the prosecutor, and the other to the poor of the parish where the offence was committed; and for want of sufficient distress, such offender shall, by warrant of such justice, be committed to

s. 11.

Within what time offences to be presented in leets.

s. 12.

Proviso.

33 Geo. 2. c. 27. s. 13. Eng.

Further penalty for taking, selling, &c. the spawn, &c. of fish.

s. 15:

Penalties how enforced and applied.

to

to the house of correction of the county, &c. where such offender shall be apprehended, to be kept to hard labour for any time not exceeding 3 months, unless the forfeiture shall be sooner paid. Provided (s. 16.) that no person shall be punished by this act, unless the prosecution be commenced within 2 months after the offence: and where any person shall be committed to the house of correction as aforesaid, and shall remain there during the time for which he shall be committed, he shall not be liable to be prosecuted again for non-payment of the money forfeited: and any inhabitant of any parish where any offence against this act shall be committed, shall be a competent witness. By s. 17. the justice may mitigate the said penalties, so as not to remit above one half. By s. 18. a form of conviction is prescribed. By s. 19. any person aggrieved may appeal to the next general or quarter session, first entering in a recognizance in double the sum forfeited, before such justice, to prosecute such appeal with effect, and abide by the order thereon; and giving 8 days notice in writing of such intention to appeal, to the party on whose prosecution such conviction was made; and the justices at such sessions shall hear the appeal, and award reasonable costs, to be levied by distress, &c.; and for want of sufficient distress, commit the party to the common gaol of the county, &c. in which he shall be apprehended, to be kept to hard labour for 6 months, unless the money forfeited, and costs, be sooner paid; and such order of such sessions shall be final; and no proceedings of such justices in or out of sessions shall be removeable by *certiorari*, or otherwise. By s. 20. any suit for any thing done in pursuance of this act shall be brought within 6 months after the fact, and shall be laid in the county, &c. in which such offence shall be committed; and the defendant may plead the general issue, &c. and shall have treble costs of verdict, nonsuit, discontinuance, or judgment on demurrer.

With respect to sea-fish: The 3 Jac. 1. c. 12. Eng. enacts, that every person who shall set up any new wear along the sea-shore, or in any haven, harbour, or creek,

or

or within 5 miles of the mouth of any haven, &c. or shall willingly take, destroy, or spoil any spawn, fry, or brood of sea-fish, in any wear or other device, shall forfeit for every time, £10. one half to the king, and the other to him that will sue for the same: And every person which in any haven, &c. or within 5 miles of the mouth of any haven, &c. shall fish with any draw-net or drag-net, under 3 inches mesh, *viz.* an inch and an half from knot to knot (except for the taking of smoulds in Norfolk only) or with any net with canvass or other device, whereby the spawn, &c. of sea-fish may be destroyed, shall forfeit such net, and also for every time 10s. the one half to the poor of the city, &c. where the offence shall be committed, and the other to the person that shall sue for the same; the said forfeitures to be levied by the mayor, or other head officer of every city or town corporate; and by warrant of a justice of peace, by the constables and church-wardens of every market-town, parish, or liberty, by distress, &c. But by s. 3. this act shall not extend to persons using nets of lesser mesh, for taking of herrings, pilchards, sprats, or lavidnian. And by s. 4. this act shall not extend to the isle of Anglesea. And by the 1 Geo. 1. st. 2. c. 18. Eng. if any person shall use at sea, upon the coast of England, any traul-net, drag-net, or set-net, for catching any fish, (except herrings, pilchards, sprats, or lavidnian) which hath the mesh less than $3\frac{1}{2}$ inches from knot to knot; or which hath a false or double bottom or pouch; or shall put one net behind another; he shall, being convicted upon his appearance, or default made after due summons, before a justice of peace of the county, &c. where the offender shall reside or be found, on oath of 2 witnesses, forfeit such nets, and also £20. to be levied by distress, &c. and in default of payment, or of sufficient distress, the offender to be imprisoned for 12 months in the common gaol of such county, &c. by such justice. By s. 5. all penalties in this act, (except nets and false bottoms) shall be distributed, one moiety to the informer, and the other to the poor of the parish where the offence shall be committed. By s. 6. all such illegal nets, as shall be so proved to have been forfeited, shall by

Penalty for erecting wears along the sea-shore, or taking, &c. spawn, &c. of sea-fish, or using certain nets.

3 Jac. 1. c. 12. s. 1. Eng.

s. 3.

Exception as to nets for herrings &c.

s. 4.

Proviso as to isle of Anglesea.
1 Geo. 1. st. 2. c. 18. s. 4. Eng.

The meshes of nets to be of what dimensions

Penalty.

s. 5.

Penalties how applied.

s. 6.

*Illegal nets to
be burnt.*

s. 7.

*Penalty for sel-
ling, &c. fish
under certain
sizes.*

s. 8.

Proviso.

s. 9.

*Limitation for
prosecutions.*

s. 17.

*Appeal to
sessions.*

*33 Geo. 2. c. 27.
s. 11. Eng.*

*Special provision
as to turbot,
&c.*

by warrant of such justice be publicly burnt. By s. 7. if any person shall bring to shore, sell, or expose to sale, any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codling 12, whiting 6, bass and mullet 12, sole 8, place or dab 8, flounder 7; he shall forfeit such fish to the poor of the parish where the offence shall be committed, and also 20s. one moiety to the informer, and the other to the poor of the parish, &c. to be levied as the other penalties; and in default of payment or of sufficient distress, he shall, by warrant of a justice of peace, be sent to the next house of correction, or other common gaol of the county, &c. where the offence shall be committed, to be severely whipped, and kept to hard labour 6 days, and not longer than 14. By s. 8. where any person shall suffer imprisonment for default of payment, or of sufficient distress, for any penalty hereby imposed, he shall not be liable afterwards to pay such penalty. Provided (s. 9.) that all prosecutions for offences against this act, be commenced within a month after such offences. And by s. 17. all persons aggrieved may appeal to the justices of peace (of the county, &c. where judgment shall be given,) at their next quarter sessions, who shall finally determine the same. But the 33 Geo. 2. c. 27. s. 11. Eng. provides, that bret or turbot, brill or pearl, although under the dimensions in the 1 Geo. 1. *supra*, may be exposed to sale, so as the same be not sold by retail for above 6d. a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured if required, the same shall be forfeited; and it shall be lawful for any person to seize the same, and deliver them to a constable, and to charge such constable with the party who demanded, &c. such higher price; and the constable shall carry the party, as also the bret, &c. before a justice of peace within whose jurisdiction such higher price was so demanded, &c.; and if the person charged with such offence shall be convicted, by confession, or by the oath of a witness, he shall forfeit 20s. and the bret, &c. shall be given to the prosecutor, and the

the money paid for such bret, &c. shall be returned to the party who paid the same. By the 31 Geo. 3. c. 51. 31 Geo. 3. c. 51. s. 1. Eng. Eng. if any person shall, with any net, traul, dredge, or other instrument or engine, take any oyster or oyster-brood, within the limits of any oyster fishery of this kingdom, or make use thereof for the purpose, although Penalty for taking oysters in the oyster beds of others. none be taken; or shall with any net, &c. drag upon the ground of any such fishery; such person (other than the owner, lessee, or occupier of such fishery, or person lawfully entitled to catch oysters therein) shall be guilty of a misdemeanor, and may be indicted at the assizes or quarter sessions for the county, &c. in which such fishery shall lie; and such person being convicted by verdict, or by his confession, shall be punished by fine and imprisonment, or either of them, as the court shall think proper; such fine not to exceed £20. nor to be less than 40s. and such imprisonment not to be for more than 3 months, nor less than 1 month. And by s. 3. any justice of peace of any county, &c. wherein any offence shall be committed, upon complaint on oath, within 30 s. 3. Offences how inquirable. days after the offence, may, by warrant, cause such offender to be brought before himself, or any other justice, who may commit him to the common gaol or other prison of such county, &c. until the next assizes or quarter sessions whichever shall first happen, unless he enter into recognizance, with 2 sureties in £20. each, to appear and answer to any indictment which may be preferred against him by virtue of this act. By s. 4. if any s. 4. such person, (except as aforesaid) shall be found taking or using engines for taking oysters or oyster-brood within the limits of any oyster fishery, it shall be lawful for Proprietors, &c. of oyster fisheries may apprehend such offenders. any person being the owner, lessee, or occupier of such fishery, or entitled to take oysters therein, and for his apprentice or servant (in case such offender shall refuse to discover his real name and place of abode) to seize and detain such offender, and carry him before a justice of peace of such county, &c.; who, on oath being made of the offence, shall proceed against him in the same manner as if he had been apprehended and brought before him by virtue of a warrant. Provided (s. 5.) that no s. 5. justice

Recognizance to prosecute required. justice shall commit any such person, or require security from him for his appearance as aforesaid, unless a sufficient housholder (being an owner, lessee, or occupier, or otherwise entitled to catch oysters in such fishery) shall enter into a recognizance in £20. for his appearance at the then next assizes or quarter sessions, and there to prefer a bill of indictment against such offender.

s. 6. And by s. 6. if after any such person shall have been committed, 2 sufficient sureties shall, before a justice of peace for such county, &c. enter into recognizance in £20. with condition for the appearance of such person at the next assizes or quarter sessions which shall first happen, and to answer to any indictment which may be preferred against him; it shall be lawful for such justice, by warrant, to order such person to be discharged.

s. 2. Provided (s. 2.) that this act shall not prevent any person from taking, catching, or fishing for any floating fish in the waters or creeks within the limits of any oyster fishery, with any net, &c. made for such purpose only.

Proviso. And provided (s. 7 & 8.) that this act shall not affect any act now in force respecting any particular oyster fishery: nor preclude any person from commencing any prosecution or action at the common law for any offence herein described: but any person who shall have been punished by this act, shall not be liable to any other punishment for the same offence, or to have any suit brought against him on account thereof.

s. 7. & 8. By s. 9. no action shall be brought against any person for any thing done by virtue of this act, until after 21 days notice thereof, in writing, shall have been given to the person against whom such action is to be brought, or left at his last usual place of abode, setting forth the cause of such action; and such action shall be brought within 6 calendar months after the cause of complaint, and shall be laid and tried in the proper county; and the defendant may plead the general issue, &c.; and if on the trial it shall appear that the same was commenced without such notice, or before the expiration of 21 days after such notice, or after 6 calendar months, or after sufficient tender of amends, a verdict shall be entered for the defendant;

Provisoes.

s. 9.

Persons enforcing this act, how protected against actions.

fendant; and the defendant shall in all cases have double costs of verdict, nonsuit, discontinuance, or judgment upon demurrer. But for the more effectual protection of oyster fisheries and the brood of oysters in England; the 48 Geo. 3. c. 144. E. enacts, that every person who shall knowingly and wilfully steal, take, and carry away any oysters or oyster brood from any oyster bed, or oyster laying, or oyster fishery, being the property of any person, &c. and sufficiently marked out as such, shall be guilty of felony, and be transported for any term not exceeding 7 years, or be imprisoned and kept to hard labour in any common gaol, or house of correction, or penitentiary house, or imprisoned only for any term not exceeding 3 years, as the court may adjudge. Provided (s. 2.) that nothing in this act shall subject any person to the penalties of this act, who shall take or carry away any oyster or oyster brood from any oyster bed, &c. wherein such person shall have or claim to have a right to take such oysters, &c. By s. 3, whereas doubts may arise in what parish or county any oyster-beds, &c. are situated; it shall be sufficient in any indictment under this act, or under the 31 Geo. 3. c. 51. *supra*, to describe, either by name or otherwise, the bed, laying, or fishery, in which the offence shall have been committed, without stating the same to be in any particular parish; and where the offence is committed on the border of any county, so as to make it difficult to ascertain the county, such offence may be stated to have been committed in the county in which the indictment shall be preferred, being either the county in which the offence was committed, or the adjoining county. By s. 4. it shall be lawful for justices of peace for towns corporate, or other places not being counties of themselves, and having special or exclusive jurisdictions, to act in all cases within their jurisdictions, in like manner as any justice of peace for any county, riding, or division, may act for such county, &c. in the execution of the 31 Geo. 3. c. 51. *supra*, or of any law for protecting the oyster fisheries, and broods of oysters. And by s. 5. this act shall not repeal any of the provisions of the 31 Geo. 3.

48 Geo. 3. c. 144. E.

*Persons stealing oysters, or oyster brood, from oyster beds, &c. guilty of felony.**Punishment.*

s. 2.

Proviso.

s. 3.

What shall be sufficient description of place in indictments.

s. 4.

Justices for towns may act as justices for counties.

s. 5.

*Provisions of
31 Geo. 3. c. 51.
confirmed.*

c. 51. except so far as the same respect the stealing and taking of oysters from any oyster bed, laying, or fishery.

There are other statutes to be found under the titles "Fish and Fisheries" in other compilations and abridgments; which it is beside the purpose of this work to detail.

*Qualification for
keeping engines,
&c. for killing
salmon.*

12 Geo. 1. c. 7.
s. 2. Ir.

Next as to the statutes made for the preservation of fish, and for protecting the rights of the proprietors and farmers of fisheries, in Ireland. By the 12 Geo. 1. c. 7. s. 2. Ir. no person, except such as has an estate of freehold in his own or his wife's right, of the clear yearly value of £40. or a personal estate of the value of £1000. and except such as is entitled to a fishery, or his farmer or person employed in the same, shall, for himself, or as servant to any person not so qualified or entitled, keep any gaff, spear, lister, loop, net, or other engine or instrument commonly made use of to kill salmon or salmon-fry; although no proof can be made that he did apply them to such use; on pain that every such gaff, &c. as also all fish found with him, shall be seized by any justice of peace of the county where the same shall be kept or found, or by any person authorized by the warrant of such justice, and shall be kept by him to his own use; and every person keeping such gaff, &c. and being convicted upon his appearance, or default after summons, before a justice of peace of the county or place where such offence shall be committed, on the oath of a witness,

*Penalty for un-
qualified persons
keeping such.*

shall forfeit 40s. to be levied by warrant of such justice, by distress, &c.; one moiety to the informer, and the other to the poor of the parish where the offence shall be committed; and if no sufficient distress, such justice may by warrant commit such person to the common gaol of the county, &c. for any time not exceeding 31 days, unless the penalty be sooner paid. And by the

3 Geo. 3. c. 35.
s. 2. Ir.

3 Geo. 3. c. 35. s. 2. Ir. no person (except the proprietors and farmers of the several salmon fisheries, and their several fishermen) shall make use of any boat, or fish with any net that hath a soale rope with sinks thereunto fixed, or make use of any instrument for taking or killing of salmon within the limits of said salmon fisheries,

*Penalty for
using boats, &c.
for taking sal-
mon within the
limits of private
fisheries.*

upon

upon pain of forfeiting £5. together with such net, boat, or instrument, upon conviction by the oath of a witness, before a justice of peace for the county where the offence shall be committed, and to be levied by distress, &c. and paid to the informer; and if no sufficient distress, the offender shall, by warrant, be committed to the county gaol for such time, not exceeding 3 nor less than 1 month, as such justice shall appoint, unless such forfeiture shall be sooner paid: And the limits of every salmon fishery are hereby understood to be such as enjoyed by the respective proprietors and farmers for 31 years past. And by the 17 & 18 Geo. 3. c. 19. s. 1. *Ir.* no person not qualified (except as herein mentioned) shall have, keep, or use any net, leape, pische, gaff, spear, or lister, or other engine, boat or curragh, [*angling rods with lines and hooks excepted] other than the makers or sellers thereof, and the owners of rivers or parts of rivers; and it shall be lawful for any owner of any river or fishery, or of part of any river or fishery, and every person by such owner, &c. appointed, to seize and keep to his own use every such net, &c. which he shall find in the possession of any person (not qualified as herein) fishing in any river, or inland fishery, lake, or inland water, without the consent of the owner thereof given under his hand; and any person, being thereunto authorized by warrant of any justice of peace of the same county, &c. may search the houses, out-houses, or other places of any person prohibited to have, &c. the same, as shall be suspected to have in his possession any net, &c. except as before excepted, and the same to seize and keep to his own use, or otherwise cut in pieces and destroy. And by s. 2. if any person shall take, kill, or destroy any carp, tench, bream, roach, perch, eel, pike, trout, cray-fish, or other fish, in or out of any pond, pool, canal, or stew, wherein the same are kept, and wherein he has no property, without the consent of the owner of such pond, &c. and be convicted on the oath of a witness, before a justice of peace of the county or jurisdiction where the fact shall be committed, he shall forfeit a sum not less than £5. nor more than £10.

17 & 18 Geo. 3.
c. 19. s. 1. *Ir.*

Penalty for un-qualified persons keeping nets, &c.

**Vide p. 885. post.*

s. 2.

Penalty for taking fish in the pond of another.

23 & 24 Geo. 3.
c. 40. s. 2. Ir.

*Penalty for
erecting shades,
&c. on the
banks of rivers,
&c. or using
nets, &c.*

*Exception as to
owners or renters
of patent or
charter fisheries.*

*Penalty for
using gaffs, &c.
to take salmon
or trout.*

**Vide p. 885.*

†*Vide s. 6 & 7
post. p. 888.*

s. 10.

*Penalty for tak-
ing fish with
lights, &c.*

26 Geo. 3. c. 50.
s. 6. Ir.

at the discretion of such justice; which forfeiture shall go to the informer, or other person as the owner of such pond, &c. shall choose; to be levied by distress, &c. and for want of such distress the offender to be committed to the county gaol for any time not exceeding 6 nor less than 3 calendar months, as such justice shall specify. The 23 & 24 Geo. 3. c. 40. Ir. further enacts, (s. 2.) that any person (not being the owner or renter of a patent or charter fishery) who shall erect any shades or stages on the banks of rivers or lakes, or who shall take any salmon or trout by the means of such shades, &c. or under the arch of any bridge, or who shall affix any basket, hoop-net, or bushes, into any mill-sluice, eel-wear, or other narrow passage, for the purpose of impeding the passage of salmon, or who shall affix or keep up continued nets stretched across the mouth of any river, shall forfeit £5. to be levied and applied as hereafter directed by this act; and if any person (not being the owner or renter of such fishery) shall, from 1 February to 1 September in any year, be found taking of salmon or trout with any gaffs, spears, strokalls, cross-lines, nets, snares, or other fishing implement, in any river, or upon any lake or pool, [*angling with single rods only excepted,] or be found carrying a gaff, &c. on the bank of any river, &c. for the purpose of taking any fish without the privity and consent of the owner of the same, such person shall forfeit such sum not exceeding £5. as any justice of peace in the county in which such offence shall be committed may think fit, to be levied and applied as hereafter directed.* And by s. 10. every person who shall take, kill, or destroy any fish with lights, snares, gaffs, cross-lines, spears, or strokalls, shall forfeit such lights, &c. and shall pay a penalty not exceeding £10. nor less than £2. to be levied on the goods of such offender, and to be applied as aforesaid; and if such sum shall not be paid within 6 days after such conviction, such offender shall be committed, by warrant, to the county gaol for such time as to such justice may appear proper, not exceeding 6 months. The 26 Geo. 3. c. 50. s. 6. Ir. recites, that the exemptions in

in favour of angling, in several acts, have encouraged idle and disorderly persons, at all hours and seasons, to commit depredations, and trespass on the property of persons owning fisheries, &c.; and therefore enacts, that nothing in any former act shall extend to giving any person not qualified by the laws now in being, under the pretence of angling, a power to fish or angle in any river or lake without the consent of the owner of such fishery or grounds on the bank of such river, &c.;

Penalty for taking fish by angling, without consent of owner of fishery.

[*and] every person so offending shall be liable to a * Not printed. penalty of not less than 5s. nor more than 40s. for every time that such angler shall be so found fishing without the consent of the owner, to be recovered by complaint on oath before any justice of peace, who shall issue his warrant for the levying the same off the goods of such offender; the constable who levies the same to give half of said penalty to the parish minister for the poor of the parish, and to keep the other for his own trouble.

And the 33 Geo. 3. c. 50. Ir. also enacts, (s. 2.) that it shall not be lawful for any person to fish with a rod, or otherwise, in any several fishery, without the license of the proprietor or farmer thereof. It is proper here to refer to the 10 W. 3. c. 8. s. 19. Ir. *ante* p. 858. and 6 Ann. c. 14. s. 10. Ir. *ante* p. 860. And the 3 Edw. 1. c. 20. E. & I. *ante* p. 827. 13 Edw. 1. st. 1. c. 47. E. & I. 13 Ric. 2. st. 1. c. 19. E. & I. 17 Ric. 2. c. 9. E. & I. and 2 Hen. 6. c. 15. E. & I. *ante* p. 872-3. are to be here also referred to,

33 Geo. 3. c. 50, s. 2. Ir.

By the 12 Geo. 1. c. 7. Ir. it shall be lawful for any person, without further warrant than this act, to seize and bring before a justice of peace of the county where the offence shall be committed, such person as he shall find fishing with his face blacked or disguised; and also such person as shall be found in, upon, or near any river, disfigured with his face blacked, or otherwise disguised, though such person be not actually fishing; which justice shall, upon conviction of such offender by the oath of a witness, by his warrant levy from him by distress, &c. 40s. one moiety to the informer, and the other to the poor of the parish where the offence shall be committed; and if no sufficient distress, such justice

Penalty for fishing in disguise.

12 Geo. 1. c. 7, s. 1. Ir.

justice shall, by warrant, commit such person to the house of correction or work-house, for any time not exceeding 31 days, there to remain at hard labour. And the 17 & 18 Geo. 3. c. 19. Ir. also enacts, that if any person shall be convicted on the oath of a witness before any justice of peace of the county, &c. where the offence shall be committed, of fishing by night with lights, or boats, curraghs, cotts, or floats, with spears, nets, snares, gins, or any engine [*except with rods and lines;] he shall forfeit any sum not more than £5. nor less than £2. at the discretion of such justice, to be levied off the goods of such offender by the warrant of said justices; which forfeiture shall be paid to the informer: and if no distress be found, such offender shall be committed to the county gaol by such justice, for any time not exceeding 6 nor less than 3 calendar months. And the 26 Geo. 3. c. 50. Ir. further enacts (s. 3.) that when 2 or more persons shall be found together with lights, spears, or other instruments for the purpose of killing salmon, or trout, or other fish, in the night, on any river, lake, or fishery, any such offender, being convicted on oath of a witness, before a justice of peace, shall be liable to a penalty of £5. to be paid forthwith by every such offender to the informer, or to any person he may direct to receive the same; and if such sum shall not be immediately paid by such offender, he shall be committed by such justice to the county gaol, for a time not exceeding 6 nor less than 3 months for the first offence, unless such fine be sooner paid, and for a time not less than 6 months for every subsequent offence of the same kind.

17 & 18 Geo. 3. c. 19. s. 3. Ir.

Penalty for fishing by night with lights, &c.

*Vide p. 885.

26 Geo. 3. c. 50. s. 3. Ir.

Two or more persons fishing in the night how punished.

At what seasons of the year killing of salmon unlawful.

31 Geo. 2. c. 13 s. 1. Ir.

With respect to the time or season of the year limited for taking fish: The 31 Geo. 2. c. 13. Ir. enacts, that any person who shall, between 12 August and 1 February, in any year, fish in any river with any net, fishing-rod, or other instrument, or carry on the bank of any river, any gaff, loop, net, lister, or spear, or other instrument for killing of salmon; shall, being convicted by confession, or oath of a witness, before a justice of peace for the county where such offence shall be

be committed, forfeit £5. to be levied by distress, &c.; and if no sufficient distress, he shall be committed to the county gaol for any time not exceeding 3 nor less than 1 month, as such justice shall appoint, unless said forfeiture shall in the mean time be paid: and it shall be lawful for any person to apprehend and carry every such offender before the next justice of peace for the county where the offence shall be committed, together with such of said instruments as shall be found in his hands.

And by s. 2. every proprietor or farmer of any salmon-fishery, or other person, who shall, between 12 August and 1 January in any year, kill or take, or be aiding, abetting, or accessory to the killing or taking of salmon in any river, being convicted by confession, or by 2 wit-

s. 2.

Penalty for persons killing salmon between 12 Aug. and 1 Jan.

nesses upon oath, before any justice of peace for the county where such offence shall be committed, shall, for every salmon so killed or taken, forfeit 40s. to be levied by distress, &c.; so as such forfeiture upon one conviction do not exceed £20: Or if any person shall, in the

night time, from 12 August to 1 February, make use of any lighted torch, or any light, in any river, banks of a ford in any river, or watercourse leading to a river, with intention to kill or take salmon, being convicted as

Penalty for using lights in the night to take salmon between 12 Aug. and 1 Feb.

aforesaid, he shall forfeit £5. to be recovered as aforesaid, and to be paid to the person discovering the same; and the making use of any such light in manner aforesaid, shall be evidence of such intention, against the person on whom the same shall be found, unless the contrary shall appear: and if no sufficient distress, the offender shall, by warrant of such justice, be committed to the county gaol for any time not exceeding 6 nor less than 3 months.* By s. 6. the forfeitures before-

s. 6.

mentioned shall go to the first informer who shall prosecute the offenders to conviction. Provided (s. 5.) that

Forfeitures how applied.

where any of the offences mentioned in this act shall be committed upon any river mearing between 2 counties, such offence may be prosecuted in either county.

s. 5.

Offences where tried.

And by s. 7. every prosecution shall be commenced within 3 calendar months after the offence. By s. 10.

s. 7.

Limit

if

*Special exceptions are made by s. 3. of this act, 3 Geo. 3. c. 35. 1r. 31 Geo. 2. c. 13. 1r. 26 Geo. 3. c. 50. 1r. and 32 Geo. 3. c. 40. 1r.

if any person shall be sued for any thing done in pursuance of this act, he may plead the general issue, and shall have costs of nonsuit, verdict, or judgment upon demurrer. By s. 8. nothing herein shall repeal any of the laws now in being relative to the taking of salmon or salmon-fry; so as that no person shall be convicted more than once for the same offence. The 17 & 18 Geo. 3. c. 19. s. 5. Ir. further enacts (s. 5.) that no person shall kill, take, or destroy any trout by the means of dams or fish-houses, commonly called fish-ponds, or by nets or other engines, [*angling excepted] from 1 October to 1 January (which is the season during which trouts deposit their spawn); upon pain of forfeiting £5; half to the poor of the parish where the offence shall be committed, and the other to the informer; said penalty to be recovered before a justice of peace of the county, &c. wherein the fact shall be committed, by the oath of a witness, and to be levied by distress, &c. and if no sufficient distress, the offender shall be committed to the county gaol for any time not exceeding 3 calendar months, as the committal by such justice shall specify. But the 23 & 24 Geo. 3. c. 40. s. 3. Ir. enacts, that no person shall kill, take, or destroy any trouts by means of dams, fish-houses, nets, or other engine, [*angling excepted] from 1 October to 1 February, † under the penalty of £5. And by s. 6. any justice of peace residing in the county where the person liable to any of the forfeitures before mentioned shall live or reside, shall be bound to hear any complaint upon oath, and if there shall appear sufficient proof of the offence, shall grant a warrant to levy by distress, &c. the forfeiture; and if no sufficient distress, he shall commit the offender to the gaol of the county where the offence shall be committed, for such time, not less than 9 days nor more than 3 calendar months, as such justice shall direct. And by s. 7. if any justice shall neglect or refuse to hear any complaint made in virtue hereof, or, upon sufficient proof made of the offence, shall refuse to grant his warrant for the purpose aforesaid, he shall forfeit £20. and the

† Vide 26 Geo. 3. c. 50. s. 20. as to the rivers Main, Co. Antrim.

the informer may recover such forfeiture from such justice, by process or civil bill before any going judge of assize for the county where such justice shall reside, upon 14 days previous service of such process. And by the 26 Geo. 3. c. 50. s. 5. Ir. any person in whose custody any salmon or trout taken out of the season or time allowed by law, and known by the name of red salmon, or spent trout or dullaghans, or other name, shall be found; or who shall be exposing to sale such fish, and be thereof convicted by the oath of a witness, before any justice of peace of the county, &c. where the same shall be found, or exposed to sale, shall forfeit 5s. for every such red or spent salmon, &c. which shall be found in his possession, one half to the informer, and the other to the constable who shall levy the same; and if such sum cannot be levied by distress, &c. then such person shall, by such justice, be committed to the county gaol or house of correction, for a space not exceeding a month, nor less than 14 days for the first offence, and not exceeding 6 nor less than 3 months for every future time. The 33 Geo. 3. c. 50. Ir. further enacts, that it shall not be lawful for any person to take, kill, or destroy any salmon, salmon-peale, or salmon-fry, in the sea, at the mouth of rivers, or within a mile of the mouth of any river, during such seasons or times as the taking of salmon in such river is now by law forbidden; and if any person shall take, &c. any salmon, &c. contrary to this act, he shall forfeit £5. And by s. 3. any justice of peace residing in the county where the person liable to such forfeiture shall live or reside, shall hear any complaint upon oath; and if there shall appear sufficient proof of the offence, he shall grant a warrant to levy the forfeiture by distress, &c. and if no sufficient distress, he shall, by warrant, commit the offender to the gaol of the county, where the offence shall be committed, for such time as such justice shall direct, not less than 9 days, nor more than 3 calendar months.

26 Geo. 3. c. 50.
s. 5. Ir.

Penalty on person in whose possession spent salmon or trout shall be found.

33 Geo. 3. c. 50.
s. 1. Ir.

Penalty for taking salmon, &c. out of season, at the mouths of rivers, &c.

s. 3.

Offences here inquirable.

For the preservation of salmon-fry and eel-fry, the 11 Eliz. st. 3. c. 4. Ir. enacts, that no person shall put any swine, hog, or pig, upon any strand of any river,
(to

Penalty for putting swine to feed on strands, &c. whereby salmon-fry and eel-fry are destroyed.

11 Eliz. st. 3. c. 4. lr.

(to be fed thereupon) in any place where the sea doth ebb or flow; upon pain of forfeiting such swine, &c. one half to the crown, and the other to such person as will seize the same; And if any person shall resist the seizing such swine, &c. he shall be used as a rescuer; and upon the presentment thereof in the queen's ordinary courts, or at any sessions, or in any court of any city or borough having jurisdiction to receive presentments, like process shall be made as upon presentment of rescue of distress for rent at common law; and the party convict shall be committed to the gaol of that court, until he make such fine to the crown for the rescue, as shall be appointed by said court, and until he pay to the crown and seizer of said swine, the value of them so rescued; such value to be appointed by the judges before whom the matter shall be adjudged: Saving to all bodies corporate, and lords, their moiety of said forfeitures, according to the tenor of their charters, the other moiety to the seizors as aforesaid. And by the 10 Car. 1. st. 3.

10 Car. 1. st. 3. c. 14. lr.

Penalty for taking fry of eels, or the spawn, &c. of salmon, &c.

* vide p. 885.

c. 14. lr. no person, with any net, or other device or engine, shall take any fry, spawn, or breed of eels, in any river or water, salt or fresh; nor take or destroy by any net, or other engine, [*angling excepted] flood-gate, salmon-pipe, or at the tail of any mill or wear, or in any straits, rivers, or brooks, the young fry, spawn, or breed of salmon, called lake-spinkes, snowtes, or salmon-peales; nor take any salmon with such stop-nets, still-nets, or standing-nets; upon pain of forfeiting 40s. and the fish and nets, and other engines and devices; one half of said forfeitures to the king, and the other to such person as will sue by action of debt, &c. in any court of record; and the justices of assize, and justices of peace, shall have power to inquire of such offences, and to punish them by fine, imprisonment, or otherwise. The

2 Geo. 1. c. 21. s. 1. lr.

Penalty for using engines to take spawning salmon, or their fry.

2 Geo. 1. c. 21. lr. is also an act to prevent the destruction of salmon-fry, and to preserve the spawning fish: This statute enacts, that no person shall make, have, or keep any lister or spear for killing of salmon, or make use of any light upon any fresh water river above the flowing of the tide; nor shall make use of any nets or other

other engines fit for taking salmon-fry at any mill-tail; upon pain of forfeiting 20s. (to be levied in manner hereafter directed) as also such nets so employed; and it shall be lawful for any person to seize any lister or spear proper for killing salmon, or wheel-basket or engine proper to take salmon fry, although the same hath not been made use of for that purpose, and to carry the same before a justice of peace of the county where the same shall be seized, who shall destroy the same. And by s. 2. it shall be lawful for any person to seize and bring before a justice of peace, every person whom he shall find offending contrary to this act, who may, upon conviction of the offender, by the testimony of a witness, issue his warrant for the raising said penalties upon the goods of such offenders, to be paid to the informer; and if such offender shall not pay said fine, such justice shall, by his warrant, commit him to the house of correction or work-house, for any time not exceeding a month, there to remain at hard labour, and have due correction, or to be publicly whipped in the next market-town the next market-day. The 12 Geo. 1. c. 7. Ir. further enacts (s. 3.) that if any person during the months of February, March, April, or May, in any year, shall, in any one day, take or kill to the number of 12 salmon-fry, whether by angling, or any other way, and such person shall be thereof convicted upon his appearance, or default after summons, by the oath of a witness, before a justice of peace of the county, &c. where such offence shall be committed, he shall forfeit 10s. to be levied by distress, &c. one half to the informer, and the other to the poor of the parish where the offence shall be committed, and for want of sufficient distress, it shall be lawful for such justice to commit such offender to the common gaol of the county, &c. for any time not exceeding 10 days, unless he shall sooner pay such penalty. And by the 31 Geo. 2. c. 13. s. 4. Ir. every person who shall, between 1 March and 1 June in any year, set any nets, cohill-net, cleave, or other instrument or engine, with a pretence to take eels, whereby salmon-fry may be taken and destroyed, or fish, or

s. 2.

*Who may apprehend such offenders.**Penalties how enforced.*

12 Geo. 1. c. 7. s. 3. Ir.

Penalty for killing 12 salmon-fry in a day.

31 Geo. 2. c. 13. s. 4. Ir.

Penalty for using nets to take salmon-fry between 1st March and 1st June.

be

s. 10. if any person shall be sued for any thing done in pur-
Pleading. suance of this act, he may plead the general issue, and
Costs. shall have costs of nonsuit, verdict, or judgment upon
 demurrer. By s. 8. nothing herein shall repeal any of
 s. 8. the laws now in being relative to the taking of salmon
Proviso. or salmon-fry; so as that no person shall be convicted
 more than once for the same offence. The 17 & 18
 17 & 18 Geo. 3. Geo. 3. c. 19. Ir. further enacts (s. 5.) that no person
 c. 19. s. 5. Ir. shall kill, take, or destroy any trout by the means of
Penalty for kil- dams or fish-houses, commonly called fish-ponds, or by
ling trouts at nets or other engines, [*angling excepted] from 1 Octo-
certain seasons. ber to 1 January (which is the season during which
 trouts deposit their spawn); upon pain of forfeiting £5;
 half to the poor of the parish where the offence shall be
 committed, and the other to the informer; said penalty
 to be recovered before a justice of peace of the county,
 &c. wherein the fact shall be committed, by the oath of
 a witness, and to be levied by distress, &c. and if no
 sufficient distress, the offender shall be committed to the
 county gaol for any time not exceeding 3 calendar
 months, as the committal by such justice shall specify.
 But the 23 & 24 Geo. 3. c. 40. s. 3. Ir. enacts, that no
 23 & 24 Geo. 3. person shall kill, take, or destroy any trouts by means
 c. 40. s. 3. Ir. of dams, fish-houses, nets, or other engine, [*angling
 *Vide p. 885. excepted] from 1 October to 1 February, † under the
 penalty of £5. And by s. 6. any justice of peace re-
 siding in the county where the person liable to any of
 the forfeitures before mentioned shall live or reside,
 shall be bound to hear any complaint upon oath, and if
 there shall appear sufficient proof of the offence, shall
 grant a warrant to levy by distress, &c. the forfeiture;
 and if no sufficient distress, he shall commit the offen-
 der to the gaol of the county where the offence shall be
 committed, for such time, not less than 9 days nor more
 than 3 calendar months, as such justice shall direct. And
 by s. 7. if any justice shall neglect or refuse to hear any
 complaint made in virtue hereof, or, upon sufficient
 proof made of the offence, shall refuse to grant his war-
 rant for the purpose aforesaid, he shall forfeit £20. and
 the

† Vide 26 Geo. 3. c. 50. s. 20. as to the rivers Main, Co. Antrim.

the informer may recover such forfeiture from such justice, by process or civil bill before any going judge of assize for the county where such justice shall reside, upon 14 days previous service of such process. And by the 26 Geo. 3. c. 50. s. 5. Ir. any person in whose custody any salmon or trout taken out of the season or time allowed by law, and known by the name of red salmon, or spent trout or dullaghans, or other name, shall be found; or who shall be exposing to sale such fish, and be thereof convicted by the oath of a witness, before any justice of peace of the county, &c. where the same shall be found, or exposed to sale, shall forfeit 5s. for every such red or spent salmon, &c. which shall be found in his possession, one half to the informer, and the other to the constable who shall levy the same; and if such sum cannot be levied by distress, &c. then such person shall, by such justice, be committed to the county gaol or house of correction, for a space not exceeding a month, nor less than 14 days for the first offence, and not exceeding 6 nor less than 3 months for every future time. The 33 Geo. 3. c. 50. Ir. further enacts, that it shall not be lawful for any person to take, kill, or destroy any salmon, salmon-peale, or salmon-fry, in the sea, at the mouth of rivers, or within a mile of the mouth of any river, during such seasons or times as the taking of salmon in such river is now by law forbidden; and if any person shall take, &c. any salmon, &c. contrary to this act, he shall forfeit £5. And by s. 3. any justice of peace residing in the county where the person liable to such forfeiture shall live or reside, shall hear any complaint upon oath; and if there shall appear sufficient proof of the offence, he shall grant a warrant to levy the forfeiture by distress, &c. and if no sufficient distress, he shall, by warrant, commit the offender to the gaol of the county, where the offence shall be committed, for such time as such justice shall direct, not less than 9 days, nor more than 3 calendar months.

For the preservation of salmon-fry and eel-fry, the 11 Eliz. st. 3. c. 4. Ir. enacts, that no person shall put any swine, hog, or pig, upon any strand of any river,
(to

26 Geo. 3. c. 50.
s. 5. Ir.

Penalty on person in whose possession spent salmon or trout shall be found.

33 Geo. 3. c. 50.
s. 1. Ir.

Penalty for taking salmon, &c. out of season, at the mouths of rivers, &c.

s. 3.

Offences how inquirable.

Penalty for putting swine to feed on strands, &c. whereby salmon-fry and eel-fry are destroyed.

11 Eliz. st. 3. c. 4. Ir.

(to be fed thereupon) in any place where the sea doth ebb or flow; upon pain of forfeiting such swine, &c. one half to the crown, and the other to such person as will seize the same; And if any person shall resist the seizing such swine, &c. he shall be used as a rescuer; and upon the presentment thereof in the queen's ordinary courts, or at any sessions, or in any court of any city or borough having jurisdiction to receive presentments, like process shall be made as upon presentment of rescue of distress for rent at common law; and the party convict shall be committed to the gaol of that court, until he make such fine to the crown for the rescue, as shall be appointed by said court, and until he pay to the crown and seizer of said swine, the value of them so rescued; such value to be appointed by the judges before whom the matter shall be adjudged: Saving to all bodies corporate, and lords, their moiety of said forfeitures, according to the tenor of their charters, the other moiety to the seizors as aforesaid. And by the 10 Car. 1. st. 3.

10 Car. 1. st. 3. c. 14. Ir.

Penalty for taking fry of eels, or the spawn, &c. of salmon, &c.

* vide p. 885.

c. 14. Ir. no person, with any net, or other device or engine, shall take any fry, spawn, or breed of eels, in any river or water, salt or fresh; nor take or destroy by any net, or other engine, [*angling excepted] flood-gate, salmon-pipe, or at the tail of any mill or wear, or in any straits, rivers, or brooks, the young fry, spawn, or breed of salmon, called lake-spinkes, snowtes, or salmon-peales; nor take any salmon with such stop-nets, still-nets, or standing-nets; upon pain of forfeiting 40s. and the fish and nets, and other engines and devices; one half of said forfeitures to the king, and the other to such person as will sue by action of debt, &c. in any court of record; and the justices of assize, and justices of peace, shall have power to inquire of such offences, and to punish them by fine, imprisonment, or otherwise. The

2 Geo. 1. c. 21. s. 1. Ir.

Penalty for using engines to take spawning salmon, or their fry.

2 Geo. 1. c. 21. Ir. is also an act to prevent the destruction of salmon-fry, and to preserve the spawning fish: This statute enacts, that no person shall make, have, or keep any lister or spear for killing of salmon, or make use of any light upon any fresh water river above the flowing of the tide; nor shall make use of any nets or other

other engines fit for taking salmon-fry at any mill-tail; upon pain of forfeiting 20s. (to be levied in manner hereafter directed) as also such nets so employed; and it shall be lawful for any person to seize any lister or spear proper for killing salmon, or wheel-basket or engine proper to take salmon fry, although the same hath not been made use of for that purpose, and to carry the same before a justice of peace of the county where the same shall be seized, who shall destroy the same. And by s. 2. it shall be lawful for any person to seize and bring before a justice of peace, every person whom he shall find offending contrary to this act, who may, upon conviction of the offender, by the testimony of a witness, issue his warrant for the raising said penalties upon the goods of such offenders, to be paid to the informer; and if such offender shall not pay said fine, such justice shall, by his warrant, commit him to the house of correction or work-house, for any time not exceeding a month, there to remain at hard labour, and have due correction, or to be publicly whipped in the next market-town the next market-day. The 12 Geo. 1. c. 7. Ir. further enacts (s. 3.) that if any person during the months of February, March, April, or May, in any year, shall, in any one day, take or kill to the number of 12 salmon-fry, whether by angling, or any other way, and such person shall be thereof convicted upon his appearance, or default after summons, by the oath of a witness, before a justice of peace of the county, &c. where such offence shall be committed, he shall forfeit 10s. to be levied by distress, &c. one half to the informer, and the other to the poor of the parish where the offence shall be committed, and for want of sufficient distress, it shall be lawful for such justice to commit such offender to the common gaol of the county, &c. for any time not exceeding 10 days, unless he shall sooner pay such penalty. And by the 31 Geo. 2. c. 13. s. 4. Ir. every person who shall, between 1 March and 1 June in any year, set any nets, cohill-net, cleave, or other instrument or engine, with a pretence to take eels, whereby salmon-fry may be taken and destroyed, or fish, or be

s. 2.

*Who may apprehend such offenders.**Penalties how enforced.*

12 Geo. 1. c. 7. s. 3. Ir.

Penalty for killing 12 salmon-fry in a day.

31 Geo. 2. c. 13. s. 4. Ir.

Penalty for using nets to take salmon-fry between 1st March and 1st June.

be aiding, abetting, or accessory to the fishing with any set or fixed net, or cohill-net, in any river, lake, or water-course leading from any river, being thereof convicted by confession, or oath of a witness, before any justice of peace for the county where such offence shall be committed, shall forfeit £10. to be levied by distress, &c. and if no sufficient distress, he shall, by warrant, be committed to the county gaol, for any time not exceeding 6 months nor less than 3 months as such justice shall appoint, unless such forfeiture shall be sooner paid.* And by the 23 & 24 Geo. 3. c. 40. s. 8.

23 & 24 Geo. 3.
c. 40. s. 8. Ir.

*Penalty for tak-
ing salmon-fry
at any time.*

Ir. no person shall take any salmon-fry in any net or wear, or by any other instrument, [†angling with single rod excepted] under the penalty of such sum not exceeding £5. nor less than £2. as such justice shall think proper, to be levied and applied as the penalties hereinbefore mentioned; and no person shall take any eel-fry under the like penalty; the said penalty to be paid by the person in whose possession such salmon or eel-fry shall be found, and to be levied and applied in manner

17 & 18 Geo. 3.
c. 19. s. 8. Ir.

*Penalty for ob-
structing or de-
stroying salmon-
fry by mill-
dams, &c.*

before-mentioned.‡ And the 17 & 18 Geo. 3. c. 19. s. 8. Ir. recites, that great quantities of salmon-fry are obstructed from returning to the sea, and destroyed at the tails of mill-streams by means of dams and other obstructions made across the streams under the water wheels of said mills; and enacts, that if any such dams, &c. are discovered, or any implement used at said places, to obstruct or destroy the salmon-fry, the proprietor, miller, or principal acting person of such mill, shall, on proof thereof by a witness before a justice of peace, forfeit £5. to be recovered as the other penalties in this

26 Geo. 3. c. 50.
s. 14. Ir.

*Duty of consta-
bles for preserv-
ing salmon-fry.*

act.§ And the 26 Geo. 3. c. 50. s. 14. Ir. further provides, that every constable, and sub-constable, for each barony in any county, &c. shall, in every year, twice in every week, from 1st of March to 15th of May, examine all mill-dams, wears, sluices, fishing-wears, and other places on any river where such fry are usually on their passage to

* *Vide s. 5. &c. p. 887.*

† *Vide p. 895.*

‡ *Vide s. 6 p. 888.*

§ *Vide s. 2. p. 883.*

to the sea; and if they shall discover any net, bush, basket, or engine, affixed or erected for the purpose of taking such fry, or find that any quantity of such fry has been taken at such mill-dam, &c. or find any number of such fry in possession of any owner of such mill, &c. they shall give immediate information thereof to any justice of peace for the county where such offence is committed, and shall, on proof of such offence, be entitled to the full sum adjudged, to be levied by such justice on such offender in pursuance of the clause against destroying of salmon-fry in the 23 & 24 Geo. 3. c. 40. *supra*, and also a further sum of £5. to be raised by the grand jury at the next general assizes for said county, &c. off the barony where such offence is committed, and paid to said constable, by the treasurer of said county, on affidavits being made of their having given information, and having procured the penalty to be levied as aforesaid: provided, that if such sub-constable upon being required to inspect the mills, &c. in his barony, during such season as the salmon-fry are on their passage to the sea, by any person qualified to appoint inspectors of the inland fisheries (pursuant to s. 12. and to the 23 & 24 Geo. 3. c. 40. s. 4. *post* p.897.) shall refuse or neglect so to do, and to give information of any offence committed against this act, which he may at said time discover, such sub-constable shall, upon information on oath before a justice of peace of such neglect or refusal, be rendered incapable of receiving from the treasurer the half year's salary as presented for such constable at the preceding assizes, but shall forfeit the same, to be applied to the use of the county infirmary.

*Constable here
rewarded for
such duty.*

*Penalty for not
performing such
duty.*

By the 23 & 24 Geo. 3. c. 40. s. 9. *Ir.* any person who shall keep down the gates of the hatches of any salmon-wear, or shall use other means in such wears to prevent the salmon going up the river to spawn, after the time limited by act of parliament for taking fish in said wears has expired, shall, for every day on any part of which said gates shall be kept down or shut, forfeit £5. to be recovered by civil bill, one half to be given to the informer, and the other to the poor of the parish. And

*Penalty for ob-
structing passage
of spawning
fish.*

*23 & 24 Geo. 3.
c. 40 s. 9. *Ir.**

whereas

whereas it is necessary that a king's share or space of 21 feet should be left open in every river for the free passage of fish, in order to increase the species; this statute enacts (s. 11.) that no person shall form any such obstruction across such rivers [*except as herein-before excepted], but shall leave a free passage, or king's share, of at least 21 feet clear in the deepest part, under the penalty of £20. for every time he shall be found guilty of such offence, to be levied and applied as the other penalties are directed by this act.† And the 26 Geo. 3. c. 50. Ir. further enacts (s. 1.) that no person having a fishing wear on any river in which a king's share or gap has been or ought to have been kept open for the free passage of salmon and other fish, shall build, or keep up any spur-wall, tail-wall, or tail-wear, parallel to the banks of said river, and running from the sides of said opening or king's share in such wear, of a greater length than 20 feet from the back of said wear; and if any person shall, after receiving notice from any justice of peace to pull down or shorten said spur-wall or tail-wall, refuse or neglect to pull them down, or shorten them to the length of 20 feet from the foundation of said wear, for a calendar month, he shall be liable to a penalty of £10. [†to be levied] by distress, &c. by warrant of any justice of peace before whom information shall be given; one moiety of said penalty to be paid to the treasurer of the infirmary, and the other to the informer; or if he will not accept the same, to the constable who shall serve the notice, and shall be aiding in levying the penalty; and if after payment of said penalty the owner of said wear shall continue said spur-walls or tail-wears for a calendar month from the date on which the penalty shall be levied, he shall be liable to a second forfeiture of £20. to be recovered and applied as aforesaid, and the like sum of £20. for every future neglect or refusal; and every justice of peace for every county, &c. shall issue such notice, and proceed, on neglect or refusal as aforesaid, to levy and apply such penalty on his having received

s. 11.

King's gap of 21 feet to be left open in wears.

Penalty.

† vide s. 6. p 888,

26 Geo. 3. c. 50. s. 1. Ir.

Penalty for building, &c. certain spur-walls, to interfere with free passage through king's gap.

Notice to remove such obstructions.

Penalty how applied.

† Not printed.

Penalty for continuing such obstructions.

* This exception seems to refer to the owners or renters of charter-fisheries, in s. 1. of this act, ante, p. 884.

received the information of a witness upon oath. Provided (s. 2.) that if such spur-walls or tail walls with the king's share, or open in the said wear, shall have been originally constructed at the time of the building or erecting of such wears, or shall (as is hereafter in particular cases allowed) be constructed on one side of the river adjoining the bank, then such wall as may have been built close along the bank-side for the support of said bank, shall remain untouched. And by s. 7. nothing in this act, nor in any former act for the preservation of fish, shall extend to such wears, banks, and heads, as are necessary for the purposes of mills, or of inland navigation, so as such wear shall not be made use of for the purposes of taking salmon or other fish. And by s. 8. if any person shall unlawfully erect or keep any wear upon any river, and a notice shall be served in writing upon the proprietor or occupier of such wear, or his known agent, by the proprietor of any grounds on the banks of such river, requiring him to prostrate or open the same within 30 days from the service of such notice, if such proprietor or occupier of such wears shall not, within that time, abate or prostrate the same, he shall forfeit £50. with costs of suit, to be recovered by action of debt in any court of record in Dublin, one moiety to the use of the person who shall sue for the same, and the other to the use of the infirmity of the county in which such wear has been unlawfully erected or kept up. And by s. 9. if the said proprietor or occupier of such wear, shall not, within 7 days after judgment shall be given against him in such action, abate, &c. such wear, it shall be lawful for any person to abate, &c. the same. Provided (s. 10.) that nothing herein shall extend to the prostrating of any wear of which the proprietor hath had an uninterrupted possession for 31 years, or who holds said wear by a patent or charter-grant; and saving to all persons, &c. their free tenement, and all rights and remedies for the asserting thereof, to which they were entitled before the passing of this act: provided (s. 11.) that nothing herein shall give any right to any person to erect or maintain any wear,

s. 2 & 7.

Proviso.

s. 8.

Penalty for not prostrating unlawful wears, after notice from any proprietor of ground on the bank of such river.

s. 9.

Such nuisances may be abated after judgment in action for penalty.

s. 10. 11 & 27.

Proviso.

wear, but such as the laws now give. And by s. 27. nothing herein shall extend to such wears, banks, and heads, as are necessary for the purposes of mills, or inland navigation, so as such wears shall not be made use of for taking salmon or other fish.

Penalty for throwing noxious ingredients into rivers.

17 & 18 Geo. 3. c. 19. s. 4. Ir.

The 17 & 18 Geo. 3. c. 19. Ir. recites (s. 4.) that the fish in the rivers of this kingdom are frequently poisoned by throwing noxious ingredients into said rivers; and therefore enacts, that if any person shall throw or empty any waste, dye-stuff, lime, flax, hemp, or other noxious or poisonous substance into any river, he shall forfeit £5. to be levied of his goods, and to be recovered by the oath of a witness, before a justice of peace of the county or jurisdiction where the fact shall be committed; one moiety to be given to the poor of the parish wherein such offence shall be committed, and the other to the first real informer; and in case no sufficient distress can be found, such offender shall be committed to the county gaol, for any time not exceeding 3 calendar months, as the justice shall specify. And by the 26 Geo. 3. c. 50. s. 13. Ir. any person may take to his own use, any flax he shall find steeping in any river or rivulet in which fish have been or usually are taken; and the person so steeping such flax (or causing, &c.) shall be, moreover, liable to the penalties of the 17 & 18 Geo. 3. c. 19. *supra*.

26 Geo. 3. c. 50. s. 13. Ir.

Flax may be seized if steeping in river or rivulet.

Persons employed to preserve salmon in spawning time, protected against certain actions of trespass, &c.

12 Geo. 1. c. 7. s. 4. Ir.

It seems to have been the most convenient arrangement to reserve for this place the following provisions (which are of a general nature) of the several fishery acts above referred to. The 12 Geo. 1. c. 7. s. 4. Ir. recites, that persons employed by the proprietors or farmers of fisheries, find it necessary, in order to preserve the salmon in spawning time, to go and watch on the banks of rivers, in order to apprehend such persons as shall endeavour to take or destroy salmon, but are threatened with actions and indictments; and therefore enacts, that it shall be lawful for such persons to walk upon the banks of rivers, not lying within any orchard or garden, in order to apprehend such persons as shall offend against this or any other act heretofore made in this kingdom for the preservation of the salmon fishing; and such person shall not be liable to any action or prosecution for

so doing; so that the person so employed, be authorized by writing under the hand of the owner or farmer of such fishery. And the 23 & 24 Geo. 3. c. 40. Ir. provides 23 & 24 Geo. 3. c. 40. s. 4. Ir. (s. 4.) that it shall be lawful for any inhabitant being near any river, lake, or pool, or holding land near the same, from time to time to view or appoint any person Inhabitant living near rivers, &c. may appoint persons to view dams, &c. injurious to spawning fish, &c. to view such river, &c. and all dams, shades, stages, and obstructions as shall be on such river, (chartered or patent fisheries excepted) and thereby discover whether any breach or omission of this act be committed; and if any person shall obstruct, or attempt to obstruct any such person from viewing the matters aforesaid, he shall forfeit £5. one half to the informer, and the other to the poor of the parish. Penalty for obstructing such persons. Provided (s. 5.) that nothing herein shall extend to such parts of rivers or lakes as shall be within any demesne, park, improvement, or pleasure-ground of any person: But by the 26 Geo. 3. c. 50. 26 Geo. 3. c. 50. s. 12. Ir. s. 12. Ir. no person shall be empowered to appoint such keepers (as in the 23 & 24 Geo. 3. *supra*.) who shall not have a freehold estate of £50. *per ann.* or a leasehold interest of £100. *per ann.* within said county, or the county next adjoining. Qualification for such conservators. With respect to the mode of levying penalties for offences against the fishery laws; the 26 Geo. 3. c. 50. Ir. provides (s. 4.) that where information upon oath of a witness shall be given to any magistrate of any salmon or trout being killed or taken, either in the day or night, with lights, by spears, lysters, stroke-alls, or any other engine or device, in any river or inland water, at such time as is prohibited (by any act in force for the preservation of the fisheries,) to take or kill such salmon, &c. and that the informant maketh oath that he is ignorant of the name of the person who hath been guilty of said offence; it shall be lawful for such magistrate of the county where the offence has been committed, to summon before him the owners of the farms contiguous to each side of the river or bank of the lake where such salmon, &c. have been killed, &c.; and if such owners of said farm cannot make it appear to the satisfaction of the magistrate, that there has been no collusion between them and the party who has committed

ted the offence, and will not make affidavit that they are ignorant of the name of such offender, then it shall be lawful to levy a fine not exceeding 20s. on such owners of the ground next adjoining such river, &c. said fine to be levied by distress, &c. and paid to the treasurer of the county infirmary for the use thereof, or to the church-wardens of the parish in which the offence has been committed, for the use of the poor. And this clause further provides, that in cases where information of offences committed against any acts for the preservation of fish in rivers, lakes, and inland waters, shall be given to a magistrate in manner prescribed by such acts, and it shall appear upon oath of the informant that he has not been able to discover the names of the offenders, then it shall be lawful for such magistrate to levy the penalties by his warrant, on the town lands touching each side of the particular part of the river, or touching that border of the lake where such facts are sworn to have been committed, and to dispose of such penalties as directed by such acts. And to protect magistrates and others for putting in execution the powers contained in

12 Geo. 1. c. 7.
s. 5. Ir.

Persons enforcing this act how protected against actions.

31 Geo. 2. c. 13.
s. 19. Ir.

17 & 18 Geo. 3.
c. 19. s. 16. Ir.

Like provisions.

23 & 24 Geo. 3.
c. 40. s. 16. Ir.

Like provision.

these fishery acts; the 12 Geo. 1. c. 7. Ir. which has been already stated under different heads, contains this common provision, that if any person shall be sued for doing any thing pursuant hereunto, he may plead the general issue; and shall have treble costs of nonsuit, verdict, or judgment by default or upon demurrer. And the 31 Geo. 2. c. 13. s. 10. Ir. which has been already stated, *ante* p. 888. is to be here also referred to. And the 17 & 18 Geo. 3. c. 19. Ir. also provides (s. 16.) that if any person shall be sued for any thing done in pursuance of this act, he may plead the general issue, and shall have treble costs of verdict, nonsuit, or discontinuance. And by the 23 & 24 Geo. 3. c. 40. s. 16. Ir. if any action shall be brought against any magistrate on account of any adjudication, or otherwise acting in pursuance of this act, he may plead the general issue, &c.; and such plaintiff shall, upon such magistrate appearing by his attorney, be obliged to enter into recognizance, with sufficient security, before a judge of the court in which such action shall be commenced, conditioned

conditioned to pay to such magistrate such costs as hereafter mentioned in case he shall be nonsuited, or fail in such action; and if the plaintiff be nonsuited, or fail, &c. such magistrate shall recover double costs. And the 26 Geo. 3. c. 50. s. 21. Ir. contains a provision precisely similar to this of the 23 Geo. 3. c. 40. s. 16. Ir. *supra*. And on the other hand the 17 & 18 Geo. 3. c. 19. Ir. provides (s. 9.) that if any constable or other officer, to whom the justices of peace are by this act directed to issue their warrants for the purpose herein-before mentioned, shall refuse or delay to execute such warrants, such justices may fine such constable, &c. for every such offence, any sum not exceeding £5. to be levied by distress, &c. and, for want of sufficient distress, commit such constable, &c. to prison for any time not exceeding 3 months; the said fine to be levied off the constable for refusing to execute the warrant by a special constable, bailiff, or peace officer appointed by the justice for that purpose. The clause (s. 7.) of the 23 & 24 Geo. 3. c. 40. Ir. *ante* p. 888-9. is to be here also referred to. The clause of the 31 Geo. 2. c. 13. Ir. which prescribes a limitation for prosecutions under this act, has been already stated, *ante* p. 887. And the 17 & 18 Geo. 3. c. 19. Ir. provides (s. 13.) that no person shall be convicted of any offence against this statute, unless the prosecution be commenced within 3 calendar months after the offence. This act (17 & 18 Geo. 3. c. 19. Ir.) provides, (s. 14.) that it shall be lawful for any person convicted before a justice, &c. of any offence against this statute, to appeal to the next quarter sessions of the peace for the county, &c. where the offence shall be committed, such person so convicted entering into recognizance before such justices, with 2 sureties to be bound in £10, each, that the person so convicted shall appear at such sessions, and abide by the judgment of the court; and in case such judgment of the justices shall be affirmed at said sessions, then such sureties shall pay, over and above the forfeiture adjudged, the legal fees unto such officers of the court as shall be entitled to them, and moreover pay unto

26 Geo. 3. c. 50.
s. 21. Ir.*Like provision.*17 & 18 Geo. 3.
c. 19. s. 9. Ir.*Duty of constables under this act how enforced*31 Geo. 2. c. 13.
s. 7. Ir.*Limitation.*17 & 18 Geo. 3.
c. 19. s. 13. Ir.*Limitation.*

s. 14.

Appeal to sessions.

unto the prosecutor, over and above said forfeiture, such costs and charges of such appeal as such court shall think reasonable. And the 26 Geo. 3. c. 50. Ir. provides (s. 22.) that any person who shall find himself aggrieved by any fine imposed by this act, to the value of 40s. may appeal to the next quarter sessions of the county, &c. who shall either confirm the fine, or else remit or mitigate it, as they shall see occasion. The 17 & 18 Geo. 3. c. 19. s. 15. Ir. contains a saving for the rights of fishermen, and their apprentices, to fish in navigable rivers or waters, with lawful nets and engines, as they might have done before this act: but none of the other statutes above referred to, contains any such saving: The 5 Geo. 2. c. 11. Ir. (the other clauses of which relate to wears on rivers in the county of Kilkenny,) contains however a similar saving. It is a provision of the 31 Geo. 2. c. 13. Ir. that no person shall, from sun-rise to sun-set, fish for or kill any herrings in any harbour on any coast in this kingdom, by casting of any net for that purpose, under the penalty of £5. to be recovered in manner herein-before mentioned.* But the other statutes regulating the coast fisheries of Ireland, do not fall within the scope of this work; as this branch of the laws concerning the public police or economy, does not seem to be of such general interest or concern as the inland fishery acts, which have been, therefore, fully detailed.

26 Geo. 3. c. 50. s. 22. Ir.

Appeal to sessions.

17 & 18 Geo. 3. c. 19. s. 15. Ir.

Saving for rights of fishermen and their apprentices

5 Geo. 2. c. 11. s. 3. Ir.

Like provision.

No person to fish for herrings between sun-rise and sun-set.

31 Geo. 2. c. 13. s. 9. Ir.

* It seems to be doubtful to which section this clause refers; as different modes of proceeding are prescribed by s. 1. 2 and 4 of this act.

ted the offence, and will not make affidavit that they are ignorant of the name of such offender, then it shall be lawful to levy a fine not exceeding 20s. on such owners of the ground next adjoining such river, &c. said fine to be levied by distress, &c. and paid to the treasurer of the county infirmary for the use thereof, or to the church-wardens of the parish in which the offence has been committed, for the use of the poor. And this clause further provides, that in cases where information of offences committed against any acts for the preservation of fish in rivers, lakes, and inland waters, shall be given to a magistrate in manner prescribed by such acts, and it shall appear upon oath of the informant that he has not been able to discover the names of the offenders, then it shall be lawful for such magistrate to levy the penalties by his warrant, on the town lands touching each side of the particular part of the river, or touching that border of the lake where such facts are sworn to have been committed, and to dispose of such penalties as directed by such acts. And to protect magistrates and others for putting in execution the powers contained in

12 Geo. 1. c. 7.
s. 5. Ir.

Persons enforcing this act how protected against actions.

31 Geo. 2. c. 13.
s. 19. Ir.

17 & 18 Geo. 3.
c. 19. s. 16. Ir.

Like provisions.

23 & 24 Geo. 3.
c. 40. s. 16. Ir.

Like provision.

these fishery acts; the 12 Geo. 1. c. 7. Ir. which has been already stated under different heads, contains this common provision, that if any person shall be sued for doing any thing pursuant hereunto, he may plead the general issue; and shall have treble costs of nonsuit, verdict, or judgment by default or upon demurrer. And the 31 Geo. 2. c. 13. s. 10. Ir. which has been already stated, *ante* p. 888. is to be here also referred to. And the 17 & 18 Geo. 3. c. 19. Ir. also provides (s. 16.) that if any person shall be sued for any thing done in pursuance of this act, he may plead the general issue, and shall have treble costs of verdict, nonsuit, or discontinuance. And by the 23 & 24 Geo. 3. c. 40. s. 16. Ir. if any action shall be brought against any magistrate on account of any adjudication, or otherwise acting in pursuance of this act, he may plead the general issue, &c.; and such plaintiff shall, upon such magistrate appearing by his attorney, be obliged to enter into recognizance, with sufficient security, before a judge of the court in which such action shall be commenced, conditioned

conditioned to pay to such magistrate such costs as hereafter mentioned in case he shall be nonsuited, or fail in such action; and if the plaintiff be nonsuited, or fail, &c. such magistrate shall recover double costs. And the 26 Geo. 3. c. 50. s. 21. Ir. contains a provision precisely similar to this of the 23 Geo. 3. c. 40. s. 16. Ir. *supra*. And on the other hand the 17 & 18 Geo. 3. c. 19. Ir. provides (s. 9.) that if any constable or other officer, to whom the justices of peace are by this act directed to issue their warrants for the purpose herein-before mentioned, shall refuse or delay to execute such warrants, such justices may fine such constable, &c. for every such offence, any sum not exceeding £5. to be levied by distress, &c. and, for want of sufficient distress, commit such constable, &c. to prison for any time not exceeding 3 months; the said fine to be levied off the constable for refusing to execute the warrant by a special constable, bailiff, or peace officer appointed by the justice for that purpose. The clause (s. 7.) of the 23 & 24 Geo. 3. c. 40. Ir. *ante* p. 888-9. is to be here also referred to. The clause of the 31 Geo. 2. c. 13. Ir. which prescribes a limitation for prosecutions under this act, has been already stated, *ante* p. 887. And the 17 & 18 Geo. 3. c. 19. Ir. provides (s. 13.) that no person shall be convicted of any offence against this statute, unless the prosecution be commenced within 3 calendar months after the offence. This act (17 & 18 Geo. 3. c. 19. Ir.) provides, (s. 14.) that it shall be lawful for any person convicted before a justice, &c. of any offence against this statute, to appeal to the next quarter sessions of the peace for the county, &c. where the offence shall be committed, such person so convicted entering into recognizance before such justices, with 2 sureties to be bound in £10. each, that the person so convicted shall appear at such sessions, and abide by the judgment of the court; and in case such judgment of the justices shall be affirmed at said sessions, then such sureties shall pay, over and above the forfeiture adjudged, the legal fees unto such officers of the court as shall be entitled to them, and moreover pay unto

26 Geo. 3. c. 50. s. 21. Ir.

Like provision.

17 & 18 Geo. 3. c. 19. s. 9. Ir.

Duty of constables under this act how enforced

31 Geo. 2. c. 13. s. 7. Ir.

Limitation.

17 & 18 Geo. 3. c. 19. s. 13. Ir.

Limitation.

s. 14.

Appeal to sessions.

unto the prosecutor, over and above said forfeiture, such costs and charges of such appeal as such court shall think reasonable. And the 26 Geo. 3. c. 50. Ir. provides (s. 22.) that any person who shall find himself aggrieved by any fine imposed by this act, to the value of 40s. may appeal to the next quarter sessions of the county, &c. who shall either confirm the fine, or else remit or mitigate it, as they shall see occasion. The 17 & 18 Geo. 3. c. 19. s. 15. Ir. contains a saving for the rights of fishermen, and their apprentices, to fish in navigable rivers or waters, with lawful nets and engines, as they might have done before this act: but none of the other statutes above referred to, contains any such saving: The 5 Geo. 2. c. 11. Ir. (the other clauses of which relate to wears on rivers in the county of Kilkenny,) contains however a similar saving. It is a provision of the 31 Geo. 2. c. 13. Ir. that no person shall, from sun-rise to sun-set, fish for or kill any herrings in any harbour on any coast in this kingdom, by casting of any net for that purpose, under the penalty of £5. to be recovered in manner herein-before mentioned.* But the other statutes regulating the coast fisheries of Ireland, do not fall within the scope of this work; as this branch of the laws concerning the public police or economy, does not seem to be of such general interest or concern as the inland fishery acts, which have been, therefore, fully detailed.

26 Geo. 3. c. 50.
s. 22. Ir.

*Appeal to
sessions.*

17 & 18 Geo. 3.
c. 19. s. 15. Ir.

*Saving for rights
of fishermen and
their apprentices*

5 Geo. 2. c. 11.
s. 3. Ir.

Like provision.

*No person to fish
for herrings be-
tween sun-rise
and sun-set.*

31 Geo. 2. c. 13.
s. 9. Ir.

* It seems to be doubtful to which section this clause refers; as different modes of proceeding are prescribed by s. 1, 2 and 4 of this act.



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